

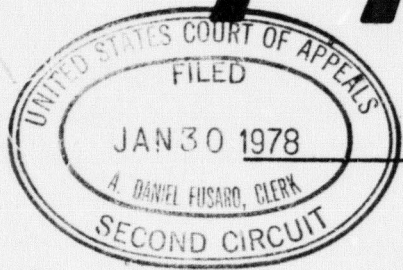
***United States Court of Appeals
for the Second Circuit***



APPENDIX

BP/s

77-6160



In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-against-

HELEN K. TASSOP d/b/a ST. ANDREW ACADEMY ON
THE SOUND, and TASSOP REALTY, INC.,
Defendant-Appellant,

-and-

ASTORIA FEDERAL SAVINGS & LOAN ASSOCIATION,
and ESTELLE LEIBOWITZ LUNGO, as Executrix of the
Estate of HOWARD LEIBOWITZ,
Defendants.

APPENDIX FOR APPELLANT

Volume II, pp. 251a - End

GENE CRESCENZI
Attorney for Defendant-Appellant
415 Lexington Avenue
New York, New York 10017
(212) 682-1686

ORIGINAL

PAGINATION AS IN ORIGINAL COPY

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(pp. 251a-252a)

251a

Employer's Quarterly Federal Tax Return

4. ADJUSTED TOTAL OF INCOME TAX WITHHELD 5714 70

5. TAXABLE F.I.C.A. WAGES PAID (Item 21) \$ 37,052 multiplied by 9.6% = TAX 3557.

6. TAXABLE TIPS REPORTED (Item 22) \$ multiplied by 4.8% = TAX 3557.

7. TOTAL F.I.C.A. TAXES (Item 5 plus Item 6) 3557.

8. ADJUSTMENT (See instructions) 3557.

9. ADJUSTED TOTAL OF F.I.C.A. TAXES 9271.

10. TOTAL TAXES (Item 4 plus Item 9) 9271.

11a. TOTAL TAXES DEPOSITED FOR THE QUARTER (See instructions in Schedule R, Page 4)

11b. OVERPAYMENT FROM PREVIOUS QUARTER

11c. TOTAL DEPOSITS (Item 11a plus Item 11b)

12a. IF ITEM 11c IS LESS THAN ITEM 10, PAY BALANCE DUE TO INTERNAL REVENUE SERVICE.

12b. IF ITEM 11c IS MORE THAN ITEM 10, ENTER EXCESS HERE \$ AND CHECK IF TO BE: ☐ APPLIED TO NEXT RETURN, OR ☐ REFUNDED.

13. If not liable for returns in succeeding quarters write "FINAL" here and enter date of final payment of taxable wages here.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date 7/7/69 Signature Title (Owner, etc.) Principal

Employer's name, address, employer identification number, and calendar quarter.

Name 11-1822476 FCR MAR 31, 1969 D011

Trade ST ANDREW ACADEMY ON THE SOUND

Address 157 50 9 AV BEECHURST N Y 11351

Name ANDREW ACADEMY ON THE SOUND

Trade BEECHURST N Y 11351

Address 11-1822476 FCR MAR 31, 1969 D011

SCHEDULE A—QUARTERLY REPORT OF WAGES TAXABLE UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT (FOR SOCIAL SECURITY)

IF WAGES WERE NOT TAXABLE UNDER THE F.I.C.A. MAKE NO ENTRIES BELOW

14. (First quarter only) Number of employees (except household) employed in the pay period including March 12th. 28

15. Total pages of this return including this page and any pages of Form 941a. 1

16. Total number of employees listed. 28

List for each nonagricultural employee the WAGES taxable under the F.I.C.A. which were paid during the quarter. If you pay an employee more than \$7,800 in a calendar year report only the first \$7,800 of such wages. In the case of "Tip income" see instructions on Page 4.

Please be sure to report each employee's name and number exactly as shown on his Social Security card.

17. EMPLOYEE'S SOCIAL SECURITY NUMBER (If number is unknown, see Circular E)	18. NAME OF EMPLOYEE (Please type or print)	19. TAXABLE F.I.C.A. WAGES Paid to Employee in Quarter (Before deductions)	20. TAXABLE TIPS REPORTED (See page 4)
000 00 0000		Dollars Cents	Dollars Cents
266 74 8858	Berta Auza	660 00	
108 22 1147	Mary Baran	912 00	
110 44 4048	Francine Bernard	793 00	
064 32 7826	Chris Carassas	1050 00	
087 05 3802	Rose Diglio	440 00	
111 34 2819	Anthony DiCerber	1899 99	
055 40 0599	Linda Fox	450 00	
109 32 0464	Beth Feldblum	1749 99	
247 32 1061	Ella V. Griffin	1366 65	
131 40 6359	Antoinette Girgenti	1666 65	
020 40 7916	Gregorio Gonzalez	1666 65	
094 28 9361	Corine Gardner	1666 65	
106 38 2668	Janic Hafelfinger	1699 98	
057 32 1864	Jules Kagian	1966 66	
060 38 8162	Edward Igel	1666 65	
126 16 1291	Connie Jisi	544 00	
086 40 6764	JoAnn Latata	1258 00	
085 32 2586	Pat Livingston	1450 00	
111 34 8521	Judith D. Miranda	1080 00	
102 34 7900	Carol Oleksiuk	1999 98	
131 36 2550	Lily Chrys	199 98	
085 36 3554	Jeffrey Richards	1720 00	
062 34 0468	Mark Reiter	1766 64	
113 28 7713	Nancy Santora	1699 98	
106 22 9273	Hilda Shanis	1500 00	
129 34 9671	Marguerite Veit	2066 64	
162 12 8407	Frances Woods	1599 99	
	Linda Mascia	512 00	

If you need more space for listing employees, use Schedule A continuation sheets, Form 941a.

Totals for this page—Wage total in column 19 and tip total in column 20

21. TOTAL WAGES TAXABLE UNDER F.I.C.A. PAID DURING QUARTER

(Total of column 19 on this page and continuation sheets.) Enter here and in Item 5 above \$ 37,052.08

22. TOTAL TIPS REPORTED UNDER F.I.C.A. DURING QUARTER. (If no tips reported, write "None")

(Total of column 20 on this page and continuation sheets.) Enter here and in Item 6 above \$

SEE "WHERE TO FILE" ON PAGE 2

(Form 941) Page 1

1. TOTAL WAGES AND TIPS SUBJECT TO WITHHOLDING PLUS OTHER COMPENSATION		36,345	36
2. AMOUNT OF INCOME TAX WITHHELD (If not required write "None")		5,462	85
3. ADJUSTMENT FOR PRECEDING QUARTERS OF CALENDAR YEAR			
4. ADJUSTED TOTAL OF INCOME TAX WITHHELD		5,462	85
5. TAXABLE F.I.C.A. WAGES PAID (Item 2) . . . \$		3,489	
6. TAXABLE TIPS REPORTED (Item 22) . . . \$		3,489	
7. TOTAL F.I.C.A. TAXES (Item 5 plus Item 6) . . . \$		3,489	
8. ADJUSTMENT (See instructions)			
9. ADJUSTED TOTAL OF F.I.C.A. TAXES		3,489	
10. TOTAL TAXES (Item 4 plus Item 9)		8,951	85
11. TOTAL TAXES DEPOSITED WITH FORMS 501 (From Schedule B, other side)			
12. BALANCE DUE (Item 10 minus Item 11) PAY TO "INTERNAL REVENUE SERVICE"			

13. If not liable for returns in succeeding quarters write "Final" here

and enter date of final payment of taxable wages here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date July 1969 Signature [Signature] Title (Owner, etc.) Principal

Employer's name, address, identification number, and calendar quarter. (If not correct, please change)

Name (as distinguished from trade name) St. Andrew Academy On The Sound Date quarter ended Jun 30, 69

Trade name, if any Beechhurst

Identification No. 11-1822476

Address and ZIP code

Entries must be made both above and below this line

Name (as distinguished from trade name)

Date quarter ended

Trade name, if any

Identification No.

Address and ZIP code

U.S. TREASURY DEPARTMENT
Internal Revenue Service

OFFICIAL BUSINESS
POSTAGE AND FEES PAID

POSTMASTER: If undeliverable treat in accordance with Section 355.56 of Postal Manual.

SCHEDULE A—QUARTERLY REPORT OF WAGES TAXABLE UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT (FOR SOCIAL SECURITY)

IF WAGES WERE NOT TAXABLE UNDER THE F.I.C.A. MAKE NO ENTRIES BELOW

14. (First quarter only) Number of employees (except household) employed in the pay period including March 12th. 15. Total pages of this return, including this page and any pages of Form 941s. 16. Total number of employees listed.

List for each employee, except agricultural employees, the WAGES taxable under the Federal Insurance Contributions Act (for Social Security) which were paid during the quarter. If you pay an employee more than \$7,800 in a calendar year, report ONLY THE FIRST \$7,800 of such wages. In the case of "Tip Income" see instructions.

SAVE TIME AND MONEY—If your report shows each employee's name and number exactly as they appear on his Social Security card it will not be necessary to write back to you to ask for the correct information.

17. EMPLOYEE'S SOCIAL SECURITY NUMBER (If number is unknown, see Circular 1)			18. NAME OF EMPLOYEE (Please type or print)		19. TAXABLE F.I.C.A. WAGES Paid to employee in Quarter (Before deductions)		20. TAXABLE TIPS REPORTED (See instructions on page 4)	
000	00	0000			Dollars	Cents	Dollars	Cents
266	74	8858	Berla Auza		600	00		
108	22	1147	Mary Baran		736	00		
110	44	4048	Francine Bernard		654	00		
064	32	7826	Chris Carassas		1050	00		
111	34	2819	Anthony DiCerbo		1899	99		
131	36	2550	Lily Chryst		199	98		
087	05	3802	Rose Diglio		376	00		
109	32	0464	Beth Feldblum		1749	99		
055	40	0599	Linda Fox		238	00		
131	40	9870	Antoinette Girgenti		1666	65		
094	28	9361	Corine Gardner		1666	65		
020	40	7916	Gregorio Gonzalez		1320	17		
247	32	1061	Ella V. Griffin		1366	65		
106	38	2668	Janice Hafelfinger		1699	98		
060	38	8162	Edward Igel		1733	31		
126	16	1291	Connie Cisi		969	00		
085	32	2586	Pat Livingston		1500	00		
086	40	6764	JoAnn Lafafa		1185	00		
057	32	1864	Jules Kagian		1966	66		
131	34	8521	Judith D. Miranda		851	10		
102	34	7900	Carol Oleksiuk		1999	98		
085	36	3554	Jeffrey Richards		1253	00		
062	34	0468	Mark Reifer		1766	64		
106	22	9273	Hilda Shanis		1500	00		
113	28	7713	Nancy Sanfora		1699	98		
129	34	9671	Marguerite Veif		2066	64		
043	34	7805	Diana Whiteway		1030	00		
162	12	8407	Frances Woods		1599	99		

If you need more space for listing employees, use Schedule A continuation sheets, Form 941a.

Totals for this page—Wage total in column 19 and tip total in column 20

21. TOTAL WAGES TAXABLE UNDER F.I.C.A. PAID DURING QUARTER

(Total of column 19 on this page and continuation sheets.) Enter here and in Item 5 above.

36,345 36

22. TOTAL TIPS REPORTED UNDER F.I.C.A. DURING QUARTER

(Total of column 20 on this page and continuation sheets.) Enter here and in Item 6 above.

bragg & smith realty

5200 YORK BOULEVARD
LOS ANGELES, CALIFORNIA 90042
254-5241

1515 COLORADO BOULEVARD
LOS ANGELES, CALIFORNIA 90041
258-3111

4777 EAGLE ROCK BOULEVARD
LOS ANGELES, CALIFORNIA 90041
254-7191

March 26, 1977

Helen K. Tassop
15807 Riverside Dr.
Beechhurst, Long Island, N. Y., 11357

Dear Helen Tassop:

Enclosed are listings which reflect a reasonable asking price for each of the three properties which we talked about.

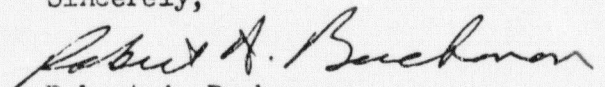
The duplex at 6309-9¹/₂ Meridian St. should sell between \$48,000 and \$51,000 depending upon the condition inside. It looks well-maintained from the outside and as long as there is an easement over the other two properties at the rear for car access it should be quite saleable at \$52,000. If you wanted to test the market at a higher listing price you might cross that figure out and start as high as \$55,000, but it also might sit on the market for some time at that higher price.

The house at 6307 Meridian could be fixed up very attractively and if the inside is at least clean and well-maintained (it doesn't have to be modernized) it will probably sell for about \$33,000 to \$34,000. The other house at 6301 Meridian St., will likely sell for \$30,000 to \$32,000.

Since they are tenant occupied, it would help if we could be able to cooperate with the tenants in showing. If this is not possible we still can go ahead and try to get offers that are subject to an interior inspection at a later date and work out the access situation. It will be helpful if you can give me the loan information (what Savings and Loan, Loan #, balance, etc.). If the property is clear, you might tell me whether you'd carry a loan with 20% cash down.

Please sign the listings and mail back to us the originals and keep the copies for your record.

Sincerely,


Robert A. Buchanan



MULTIPLE LISTING SERVICE — NORTHEAST REALTY BOARD

254a

Prepare in triplicate

This listing expires July 26, 1977

THIS IS AN EXCLUSIVE RIGHT AGREEMENT WITH A MEMBER OF THE NORTHEAST REALTY BOARD and must be for a period of sixty days or longer.

The Broker may rely on the accuracy of the following information in presenting the property to prospective buyers, and the undersigned hereby agrees to indemnify and hold the Broker harmless from all loss, damage, expense or liability incurred by the Broker, any sub-agent, or Northeast Realty Board, should said information prove to be inaccurate. Measurements are approximate. Owner will allow signs to be placed on property? YES ☒ NO ☐

Owner will allow lock-box to be used? YES ☐ NO ☒

ADDRESS 6309-09¹/₂ Meridian St. CITY Los Angeles
NO. OF UNITS 2 ZONE _____ CROSS ST. _____
AGE Older LOT _____ ROOF _____
CONST. stucco GARAGES _____ FLOORS _____
SQ. FT. _____ PARKING _____ HEAT _____
SEWERS IN? Yes CONN. ? yes TV ANTENNAS _____
PAID? yes

PRICE \$ 52,000
DOWN \$ _____
1ST T/D \$ _____ INT. _____ %
PAYMTS. \$ _____ MO. _____
BENEFIC. _____
2ND T/D \$ _____ INT. _____ %
PAYMTS. \$ _____ MO. _____
BENEFIC. _____
OWNER CARRY \$ _____
L/COM. \$ _____ INT. _____ % YRS. _____
CURRENT TAXES \$ _____
YR. GR. INC. \$ _____
YR. EXP. \$ _____
SCHED. NET \$ _____
HOW SHOWN? _____

NUMBER OF			FURN. OR UNFURN.	NO. OF APTS.	AT EA.	MO. INCOME	DESCRIPTION OF EXPENSES	MO. EXPENSES
ROOMS	BEDROOMS	BATHS						
	2	1			\$	\$		\$
	2	1						
TOTAL MO.						\$		\$

REMARKS: _____

OWNER'S NAME (PLEASE PRINT) Helen K. Tassop
OWNER'S ADDRESS 15807 Riverside Dr., Van Nuys Beechhurst, Long Island, N. Y., 11357

In consideration of services to be performed by the undersigned Broker, hereinafter called Broker for a period terminating at the above expiration date, I do hereby employ said Broker and any sub-agent working through him as my sole agent, with exclusive and irrevocable right to sell property known as (give address) 6309-09¹/₂ Meridian St.

more particularly described as LOT _____ TRACT _____

as per Map recorded in BOOK _____ PAGE _____ of Maps, Official Records of the County of _____, State of California, and to accept a deposit thereon. It is understood and agreed that said Broker will list said property with the Northeast Realty Board and that its members act as sub-agents.

The selling price shall be \$ 52,000 payable on the following terms: cash or such other
terms acceptable to seller

I agree at my own expense to furnish buyer with a report from a licensed structural pest control operator, covering termites, dry rot and fungus affecting the dwellings on said premises. If such report discloses active infestation or resultant damage seller will eliminate such infestation and repair damage at his own expense. Any treatment to be made specifically to guard against future infestation shall be at the option and expense of the buyer I AGREE ☐ I DO NOT AGREE ☐

I warrant that I have not received notification of any changes or corrections to be done to the improvements on subject property from any governmental agency except none

Should I receive such notification of any changes or corrections during the listing period or subsequent escrow period, I promise to notify my listing agent immediately.

I agree at my own expense to furnish buyer with a good and sufficient deed to said property and policy of title insurance in the amount of purchase price. I further agree to pay our share of taxes, insurance premiums, interest payments and rents, pro-rated to the date of close of escrow.

I agree to pay Broker a commission of 7 % of the total sales price, if during the term of this agency a purchaser ready, willing and able to purchase said property is produced through said Broker at the above price and terms, or any other which I may accept, or if said property be sold, transferred or leased during the term of this agency by me or by another agent or by anyone else. Should sale be made within ninety (90) days after the termination of this agreement to parties with whom said Broker or I negotiated during the term or any extension thereof and said Broker notifies me in writing of such negotiation on or before expiration date, I agree to pay said Broker the commission agreed upon. Should a deposit be forfeited, one-half thereof may be retained by said Broker and the balance shall be paid to me. The Broker's share of any forfeited deposit, however, shall not exceed the commission.

I agree to cooperate in making the property available for inspection by prospective buyers or lenders.

I hereby acknowledge receipt of a copy hereof.

Date _____, 19____ Signed X
_____, California Signed _____

In consideration of the above employment, the undersigned Broker agrees to use diligence in procuring a purchaser.

Date March 26, 1977, 19____ Broker Bragg & Smith Realty
Los Angeles, California Salesman Robert A. Buchanan
ADDRESS 5200 York Blvd. BUS. PH. 254-5241 RES. PH. 254-7917





LISTING AGREEMENT

255a

MULTIPLE LISTING — NORTHEAST REALTY MULTIPLE LISTING SERVICE OF LOS ANGELES, INC.

Prepare in triplicate

This listing expires July 26, 1977

THIS IS AN EXCLUSIVE RIGHT AGREEMENT WITH A MEMBER OF THE NORTHEAST REALTY MULTIPLE LISTING SERVICE OF LOS ANGELES, INC. and must be for a period of sixty days or longer.

The Broker may rely on the accuracy of the following information on presenting the property to prospective buyers, and the undersigned hereby agrees to indemnify and hold the Broker harmless from all loss, damage, expense or liability incurred by the Broker or any sub-agent, or Northeast Realty Multiple Listing Service of Los Angeles, Inc. should said information prove to be inaccurate. Measurements are approximate. Owner will allow signs to be placed on property? YES ☐ NO ☐ Owner will allow lock-box to be used? YES ☐ NO ☐

ADDRESS <u>6307 Meridian St.</u>	CITY <u>Los Angeles</u>	PRICE \$ <u>36,000</u>
	CROSS ST. _____	DOWN \$ _____
BEDROOMS UP _____ (<u>X</u>) (<u>X</u>) (<u>X</u>)	BATHS _____	1ST T/D \$ _____ INT. _____ %
BEDROOMS DN. _____ (<u>X</u>) (<u>X</u>) (<u>X</u>)	BATHS _____	PAYMTS. \$ _____ MO. _____
DEN (<u>X</u>) CONV. ? _____ LIV. RM. _____ X	DIN. RM. _____ X	BENEFIC. _____
NO. OF ROOMS _____ KITCHEN _____ X	BRKFST. _____ X	LOAN NO. _____ MC. _____
AGE _____ BUILT-INS _____	SHOWERS _____	2ND T/D \$ _____ INT. _____ %
CONST. _____ LAUNDRY _____	BASEMENT _____	PAYMTS. \$ _____ MO. _____
SQ. FT. _____ ROOF _____	GARAGE _____	BENEFIC. _____
LOT _____ LEVEL ? _____	PATIO _____	OWNER _____
ZONE _____ HEAT _____	FIREPLACE _____	CARRY \$ _____
TV ANTENNA _____ FLOORS _____	SPRINKLERS _____	L/COM. \$ _____ INT. _____ %
SEWERS IN ? _____ PAID AND _____	CONNECTED ? _____	FOUNDATIONS ? _____
ELEM. SCHOOL _____ JR. HIGH _____	HOW SHOWN _____	CURRENT TAXES \$ _____
HIGH SCHOOL _____ PAROCHIAL _____	POSSESSION _____	LOK-BOX LOC _____

REMARKS:

OWNER'S NAME (PLEASE PRINT) Helen K. Tascop
OWNER'S ADDRESS 15807 Riverside Dr., Beechhurst, Long Island, N.Y., 11357

In consideration of services to be performed by the undersigned Broker, hereinafter called Broker, for a period terminating at the above expiration date, I do hereby employ said Broker and any sub-agent working through him as my sole agent, with the exclusive and irrevocable right to sell property known as (give address) 6307 Meridian St.

and to accept a deposit thereon. It is understood and agreed that said Broker will list said property with the Northeast Realty Multiple Listing Service of Los Angeles, Inc. and that its members act as sub-agents.

The selling price shall be \$ 36,000 payable on the following terms:
cash or such terms acceptable to seller

I agree at my own expense to furnish buyer with a report from a licensed structural pest control operator, covering termites, dry rot and fungus affecting the dwellings on said premises. If such report discloses active infestation or resultant damage seller will eliminate such infestation and repair damage at his own expense. Any treatment to be made specifically to guard against future infestation shall be at the option and expense of the buyer I AGREE ☐ I DO NOT AGREE ☐

I warrant that I have not received notification of any changes or corrections to be done to the improvements on subject property from any governmental agency except none

Should I receive such notification of any changes or corrections during the listing period or subsequent escrow period, I promise to notify my listing agent immediately.

I agree at my own expense to furnish buyer with a good and sufficient deed to said property and policy of title insurance in the amount of purchase price. I further agree to pay our share of taxes, insurance premiums, interest payments and rents, pro-rated to the date of close of escrow.

I agree to pay Broker a commission of 7 % of the total sales price, if during the term of this agency a purchaser ready, willing and able to purchase said property is produced through said Broker at the above price and terms, or any other which I may accept, or if said property be sold, transferred or leased during the term of this agency by me or by another agent or by anyone else. Should sale be made within ninety (90) days after the termination of this agreement to parties with whom said Broker or I negotiated during the term or any extension thereof and said Broker notifies me in writing of such negotiation on or before expiration date, I agree to pay said Broker the commission agreed upon. Should a deposit be forfeited, the full amount may be retained by said Broker and the balance shall be paid to me. The Broker's share of any forfeited deposit, however, shall not exceed the commission.

I agree to cooperate in making the property available for inspection by prospective buyers or lenders.

I hereby acknowledge receipt of a copy hereof.

Date _____, 19____ Signed _____
_____, California Signed _____

In consideration of the above employment, the undersigned Broker agrees to use diligence in procuring a purchaser.

Date March 26, 1977, 19____ Broker Dr. & Smith Realty
Los Angeles, California Salesman Robert A. Buchanan
ADDRESS 5200 York Blvd. BUS PH 254-5211 RES PH 254-7947





LISTING AGREEMENT

256a

MULTIPLE LISTING — NORTHEAST REALTY MULTIPLE LISTING SERVICE OF LOS ANGELES, INC.

Prepare in triplicate

This listing expires July 26, 1977

THIS IS AN EXCLUSIVE RIGHT AGREEMENT WITH A MEMBER OF THE NORTHEAST REALTY MULTIPLE LISTING SERVICE OF LOS ANGELES, INC. and must be for a period of sixty days or longer.

The Broker may rely on the accuracy of the following information on presenting the property to prospective buyers, and the undersigned hereby agrees to indemnify and hold the Broker harmless from all loss, damage, expense or liability incurred by the Broker or any sub-agent, or Northeast Realty Multiple Listing Service of Los Angeles, Inc. should said information prove to be inaccurate. Measurements are approximate. Owner will allow signs to be placed on property? YES ☒ NO ☐ Owner will allow lock-box to be used? YES ☐ NO ☒.

ADDRESS <u>6301 Meridian St.</u>	CITY <u>Los Angeles</u>	PRICE <u>\$ 34,000</u>
	CROSS ST. _____	DOWN \$ _____
BEDROOMS UP _____ (<u>X</u>) (<u>X</u>) (<u>X</u>)	BATHS _____	1ST T/D \$ _____ INT. <u>X</u>
BEDROOMS DN. _____ (<u>X</u>) (<u>X</u>) (<u>X</u>)	BATHS _____	PAYMTS. \$ _____ MO. _____
DEN (<u>X</u>) CONV. <u>?</u> L.V. RM. _____	DIN. RM. _____	BENEFIC. _____
NO. OF ROOMS _____	KITCHEN <u>X</u> BRKFST. _____	LOAN NO. _____
AGE _____	BUILT-INS _____ SHOWERS _____	2ND T/D \$ _____ INT. _____ %
CONST. _____	LAUNDRY _____ BASEMENT _____	PAYMTS. \$ _____ MO. _____
SQ. FT. _____	ROOF _____ GARAGE _____	BENEFIC. _____
LOT _____	LEVEL <u>?</u> PATIO _____	OWNER CARRY \$ _____
ZONE _____	HEAT _____ FIREPLACE _____	L/COM. \$ _____ INT. _____ %
TV ANTENNA _____	FLOORS _____ SPRINKLERS _____	_____ YRS. \$ _____ MO. _____
SEWERS IN? _____	PAID AND CONNECTED? _____	FOUNDATIONS? _____
ELEM. SCHOOL _____	JR. HIGH _____	HOW SHOWN _____
HIGH SCHOOL _____	PAROCHIAL _____	POSSESSION _____
REMARKS: _____		CURRENT TAXES \$ _____
		LOCK-BOX LOC. _____

OWNER'S NAME (PLEASE PRINT) Helen K. TassopOWNER'S ADDRESS 15807 Riverside Dr., Beechhurst, Long Island, N.Y. 11357

In consideration of services to be performed by the undersigned Broker, hereinafter called Broker, for a period terminating at the above expiration date, I do hereby employ said Broker and any sub-agent working through him as my sole agent, with the exclusive and irrevocable right to sell property known as (give address) 6301 Meridian St.

and to accept a deposit thereon. It is understood and agreed that said Broker will list said property with the Northeast Realty Multiple Listing Service of Los Angeles, Inc. and that its members act as sub-agents.

The selling price shall be \$ 34,000 payable on the following terms:
cash or such terms acceptable to seller

I agree at my own expense to furnish buyer with a report from a licensed structural pest control operator, covering termites, dry rot and fungus affecting the dwellings on said premises. If such report discloses active infestation or resultant damage seller will eliminate such infestation and repair damage at his own expense. Any treatment to be made specifically to guard against future infestation shall be at the option and expense of the buyer I AGREE ☐ I DO NOT AGREE ☐

I warrant that I have not received notification of any changes or corrections to be done to the improvements on subject property from any governmental agency except none

Should I receive such notification of any changes or corrections during the listing period or subsequent escrow period, I promise to notify my listing agent immediately.

I agree at my own expense to furnish buyer with a good and sufficient deed to said property and policy of title insurance in the amount of purchase price. I further agree to pay our share of taxes, insurance premiums, interest payments and rents, pro-rated to the date of close of escrow.

I agree to pay Broker a commission of 7 % of the total sales price, if during the term of this agency a purchaser ready, willing and able to purchase said property is produced through said Broker at the above price and terms, or any other which I may accept, or if said property be sold, transferred or leased during the term of this agency by me or by another agent or by anyone else. Should sale be made within ninety (90) days after the termination of this agreement to parties with whom said Broker or I negotiated during the term or any extension thereof and said Broker notifies me in writing of such negotiation on or before expiration date, I agree to pay said Broker the commission agreed upon. Should a deposit be initiated, and held thereon may be retained by said Broker and the balance shall be paid to me. The Broker's share of any forfeited deposit, however, shall not exceed the commission.

I agree to cooperate in making the property available for inspection by prospective buyers or lenders.

I hereby acknowledge receipt of a copy hereof.

Date March 26, 1977, 19 _____ Signed X
_____, California Signed _____

In consideration of the above employment, the undersigned Broker agrees to use diligence in procuring a purchaser.

Date March 26, 1977, 19 _____ Broker Ray & Smith Realty
_____, California Salesman Robert A. Buchanan

Los Angeles, California ADDRESS 5200 York Blvd. BUS. PH. 251-5411 RES. PH. 251-7017



LETTER FROM MYRON C. BAUM TO HONORABLE EDWARD R. NEAHER
DATED MAY 10, 1977 IN RESPONSE TO DEFENDANT'S BRIEF OF
MAY 5, 1976 (pp. 257a-261a)

257a



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

May 10, 1977

Address Reply to the
Division Indicated
and Refer to Initials and Number
MCB:JF:RFM Mitchell:rad
5-52-13040

EXPRESS MAIL

Honorable Edward R. Neaher
United States District Judge
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Helen K. Tassop, et al.,
Civil No. 75-C-1481 - (E. D. N. Y.)

Dear Judge Neaher:

This letter will serve as a response to the Brief submitted on May 5, 1977, by the defendant Helen Tassop.

The defendant has raised four points, all of which have earlier been presented to the Court (in Mr. Crescenzi's memorandum of June 22, 1976) and responded to by the Government (in Mr. Ferrel's Affidavit of July 15, 1976, or in our memorandum of April 19, 1977). The Government submits that nothing in the defendant's papers can alter the outcome of this case, i.e., the prompt judicial sale of her property; nothing has been submitted that warrants further evidentiary proceedings. To the contrary, the defendant is simply arguing over the precise amount of her tax liability. The Government will, however, respond to each of the defendant's issues.

The defendant has documented her withholding tax liability for the second quarter of 1966, and her check in the amount of \$6,550.62, dated April 10, 1967, in payment thereof. In her earlier memorandum of June 22, 1976, the defendant has suggested that she has another credit, in the amount of \$6,493.02, and that Internal Revenue has failed to give her credit for that. She has never documented this alleged additional credit.

Attached as Exhibit 1 is a seven-page Certificate of Assessments and Payments relative to all of the defendant's 1966 withholding taxes. (The irrelevant quarters are confidential, and hence are deleted.) This document at page 3 demonstrates that on April 10, 1967, the defendant paid \$6,550.62 upon her liability, of which \$57.60 was transferred to another account. The balance applied to the second quarter of 1966 was \$6,493.02 -- the exact amount that the defendant has alleged as a second, unexplained payment on her part. Hence, there was a single payment of \$6,550.62, of which \$6,493.02 was applied on the second quarter of 1966, and \$57.60 applied elsewhere. There was no duplication of payments or credits.

The defendant further contends that she was not given credit for a payment of \$7,281.55. As she demonstrates, in April, 1967, she paid this amount in three separate checks, and as Exhibit 1 at page 6 establishes, she was given full credit for these amounts. The defendant has referred to this payment -- in her memorandum of June 22, 1976, at page 52 -- as an overpayment of September 6, 1968. The Government is reluctant to guess or hypothesize as to where the defendant has obtained such a date; certainly there were not two separate payments in the identical amount, and the defendant has never tendered evidence of such a second payment or credit.

The year 1966 is not in litigation; the defendant contends that these "additional credits" of almost \$14,000 serve to reduce her overall liability. Mr. Ferrel's Affidavit of July, 1976, adequately and completely responded to these allegations when made ten months ago, and the Government has herewith provided additional documentation. These repeated allegations by the defendant reflect her continuing efforts to hinder and delay this litigation.

The defendant once again contends that she filed her tax returns for the first two quarters of 1969, and that the 1974 assessment for these quarters is time-barred. At the recent hearing, the Government admitted that this is a disputed issue of fact. However, it was also a

disputed issue on February 6, 1976, at which time the defendant consented to judgment against herself. Mr. Peter Newman, her former counsel, recited into the record (page 7 of the hearing transcript) those four items that the defendant wished to retain her right to dispute, and the issue of the filing of these 1969 returns was clearly not one of these four issues. Certainly the defendant's right to contest this point was lost when the consent judgment was entered.

Nevertheless, should the Court be willing to reopen and rehear this limited portion of the case, the Government notes that no more than possibly \$34,000 arises out of these quarters, less than 12 percent of the principal judgment liability.

Finally, the defendant again recites her time-worn claims concerning the seizure by Internal Revenue of her California property. The legal defects in these arguments were set forth in the Government memorandum of April 19, 1977 (pages 15, et seq.), and the defendant has added nothing new. Attached as Exhibits 2 and 3 are the Levy and Notice of Seizure relative to the three parcels described in defendant's Exhibit D (the realtor's letter). The hand-marked red asterisk on Exhibit 2 establishes that these properties were seized for 1973 taxes assessed on September 17, 1973. The defendant has never contested the validity of this assessment, so that she cannot contest any levy made pursuant thereto.

Exhibit D, the realtor's letter, is worthless as relevant evidence. It recites a 1977 "asking price," not fair market value, and not any 1975 price, and does not indicate the defendant's 1975 equity, if any, in the property. Even if the defendant had a legal argument to make, clearly she has no admissible evidence in support of it.

The defendant has disregarded the Court's instructions that she set forth precise reasons why the judgment be set aside, and has instead restated and rehashed the same adjustments that she has put forward previously. In his letter to the Court of April 28, 1977, counsel for the defendant stated that "she never fully had the opportunity" to submit her objections to the consent judgment. Yet every item put forward in the recent Brief may be found in the Memorandum of June 22, 1976, so that counsel's protest is in error.

The letter of April 28, 1977, and the recent Brief indicate that the defendant has abandoned her Rule 60 motion, and now simply claims that the Government is "wrong in its computation of the tax liability." This computation could be disputed indefinitely, but it should not delay the judicial sale. While the defendant is quibbling over small sums, interest accrues and her disobedience to Judge Judd's Preliminary Injunction continues.

It is clear that on May 27, 1976, Judge Judd ordered the judicial sale of the defendant's property (transcript, pages 7, 11-12), even though it was definitely anticipated that the defendant would submit a recomputation of her liability (pages 3, 8-9). Now that the defendant has abandoned her Rule 60 motion, and puts forward only computational matters, limited apparently to no more than 12 percent of the judgment liability, the Government urges that the formal sale order be entered, so that advertising might commence.

Thank you for your consideration of our views on this matter.

Sincerely yours,

MYRON C. BAUM
Acting Assistant Attorney General
Tax Division

By:

JEROME FINK
Chief, Civil Trial Section
Northern Region

Enclosures

cc: Robert S. Taft, Esq. - (by Express Mail)
Hatfield, Brady & Taft
277 Park Avenue
New York, New York 10017

Gene Crescenzi, Esq. - (by Express Mail)
415 Lexington Avenue
New York, New York 10017

Armin J. Kikel, Esq.
65-01 Fresh Pond Road
Ridgewood, New York 11227

John M. Graham, Jr., Esq.
Thomas & Graham
36-17 - 30th Avenue
Long Island City, New York 11103

United States Attorney
Brooklyn, New York

Chief Counsel
Internal Revenue Service

EXHIBITS ANNEXED TO FOREGOING LETTER:

Page 1 of 7

EIN or SSN	
------------	--

158-07 Riverside Drive, Beechhurst, N.Y. 11357

11-1822476

EXHIBIT 1 - CERTIFICATE OF
INDEMNITIES AND PAYMENTS 262a
(pp. 262a-268a)

Page 2 of 7

NAME OF TAXPAYER

ADDRESS (Number, street, city, and State)

EIN OR SSN	
------------	--

H. K. Tassop

158-07 Riverside Drive, Beechhurst, N.Y. 11357

11-1822476

[illegible]

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

Page 3 of 7

NAME OF TAXPAYER H. K. Tassop	ADDRESS (Number, street, city, and State) St. Andrew Academy 158-07 Riverside Drive, Beechhurst, N.Y. 11357	EIN OR SSN 11-1822476
--------------------------------------	---	------------------------------

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							Form 941 6603
12-30-66	Return Filed and Tax Liability Assessed	5,353.32			1114133100079		Form 941 6606
	FTD Penalty	89.22					
	Computer Generated Assessment of Delinquency Penalty	803.00					
	Computer Generated Interest Assessment	132.59					
03-02-67	Subsequent Payment		6,378.13		1115806200092		
04-07-67	Computer Generated Interest Assessment	66.45					
04-10-67	Subsequent Payment		6,550.62		1111710470542		
05-05-67	Generated Overpayment Transferred Within Taxpayer's Account		(57.60)		1114133100079		

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

Page 4 of 7

NAME OF TAXPAYER

ADDRESS (Number, street, city, and State)

EIN OR SSN

H. K. Tassop

St. Andrew Academy

158-07 Riverside Drive, Beechhurst, N.Y. 11357

11-1822476

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
06-23-67	Generated Abatement of Interest Assessed	(66.45)			1115810200008		Form 941 6606
03-02-67	Dishonored Check But no Generated Penalty	6,378.13					
06-23-67	Manually Computed Bad Check Penalty	63.78					
	Computer Generated Interest Assessment	101.90			1114133100079		
07-11-67	Subsequent Payment		50.79		1115819300129		
08-18-67	Computer Generated Interest Assessment	1.51					
07-11-67	Designated Payment of Interest		1.51				
11-15-68	Generated Abatement of Interest Assessed	(1.51)			1114133100079		
	Generated Overpayment Transferred Within Taxpayer's Account		(1.51)				
11-15-68	Generated Interest Due on Overpayment		.11				

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

Page 6 of 7

NAME OF TAXPAYER	ADDRESS (Number, street, city, and State)	EIN OR SSN
H. K. Tassop	St. Andrew Academy 158-07 Riverside Drive, Beechhurst, N.Y. 11357	11-1822476

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							Form 941 6609
03-17-67	Return Filed and Tax Liability Assessed	174.40			1114104064300		Form 941 6612
04-14-67	Subsequent Payment		2,500.00		1111712970680		
04-25-67	Subsequent Payment		4,781.56		1111712970676		
08-30-68	Abates a Prior Tax Assessment in Whole or in Part	(174.40)			1115420910085		

EXHIBIT 2 - LEVY

269a

Form 668-B

(Rev. Jan. 1970)

Internal Revenue Service

Levy

Due From

H. K. Tassop
 St. Andrew Academy
 158-07 Riverside Drive, Boechhurst, New York 11357

Originating Internal Revenue District (City and State)

Brooklyn, New York



Tax Form Number	Tax Period Ended	Date of Assessment	Identifying Number	Unpaid Balance of Assessment	Statutory Additions	Total
941	12-31-69	5-16-72	11-1822476	\$ 15,318.67	\$ 4,469.43	\$ 19,788.10
941	03-31-70	5-16-72	11-1822476	17,876.42	5,085.01	22,961.43
941	06-30-70	5-16-72	11-1822476	16,641.27	4,744.42	21,375.69
941	12-31-70	5-16-72	11-1822476	18,657.80	5,484.62	24,142.42
941	03-31-71	5-16-72	11-1822476	20,833.07	5,891.87	26,724.94
941	06-30-71	5-16-72	11-1822476	18,280.40	5,871.65	24,152.08
941	12-31-71	5-16-72	11-1822476	19,612.72	5,941.55	25,554.27
941	03-31-72	8-02-72	11-1822476	18,675.75	4,918.76	23,594.51
941	06-30-72	8-02-72	11-1822476	12,172.46	3,894.22	16,066.68
941	12-30-72	8-02-72	11-1822476	1,317.17	253.06	1,570.23
*941	03-31-73	9-17-73	11-1822476	19,656.84	3,529.10	23,185.94
941	06-30-73	10-01-73	11-1822476	262.40	15.25	277.65

The taxpayer has been invited to be present at the time an inventory is taken and he, or his representative (was not), in fact present at inventory time.

Total Amount Due ▷ \$ 229,393.91

There is now due, owing, and unpaid with respect to the above-named account, the amounts set forth herein for Internal revenue taxes for which notice and demand has been made for payment. Section 6331, Internal Revenue Code, authorizes collection of taxes by levy upon all property or rights to property of a taxpayer (except property that is exempt under section 6334) or on which the lien provided by section 6321 exists. Therefore, under the provisions of section 6331, so much of the property or rights to property, either real or personal, as may be necessary to satisfy the unpaid balance of assessment set forth herein together with additions provided by law, including fees, costs, and expenses of this levy, are hereby levied upon in order to satisfy the taxes and additions.

Dated at Los Angeles, California this 24th day of May 1975

Signature

Title

Revenue Officer

Form 668-B (Rev. 1-70)

EXHIBIT 3 - NOTICE OF SERVICE

270a

Department of the Treasury Internal Revenue Service

Notice of Seizure

Serial Number

CS 95-01-13-5020

Form
2433

(Rev. April 1972)

Name and Address

Helen K. Tassop AKA Helen K. Tassopolous
158-07 Riverside Drive
Beechurst, Long Island, New York 11357

30.00

Pursuant to the authority in section 6331 of the Internal Revenue Code and by virtue of a levy placed in my hands for execution by the District Director of Internal Revenue of the district shown below, I have seized the following described property for nonpayment of delinquent internal revenue taxes:

Due From	In the Amount of	Internal Revenue District (City and State)
H. K. Tassop AKA Helen K. Tassop AKA Helen K. Tassopolous AKA Helen K. Tassapolous St. Andrew Academy 158-07 Riverside Drive, Beechurst, New York 11357	\$ 239,990.91	Brooklyn, New York

Description of Property

Real property in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Parcel 1: Lot 1 of Avenue 64, Tract 64 of 64, as per map recorded in Book 7, Page 133 of Maps, in the Office of the County Recorder of Los Angeles County, commonly known as 6301 Meridian Street, Los Angeles, Calif. 90042. 12,000.00

Parcel 2: Lot 2 of Avenue 64, Tract 64 of 64, as per map recorded in Book 7, Page 133 of Maps, in the Office of the County Recorder of Los Angeles County, commonly known as 6307 Meridian Street, Los Angeles, Calif. 90042. 8,000.00

Parcel 3: Lot 3 of Avenue 64, Tract 64 of 64, as per map recorded in Book 7, Page 133 of Maps, in the Office of the County Recorder of Los Angeles County, commonly known as 6309-6303 Meridian Street, Los Angeles, Calif. 90042. 20,000.00

40,000.00

Property Located or Stored at (Show address)

6301, 6307, 46309-6309 1/2
MERIDIAN ST.

LOS ANGELES, CALIF. 90042

Disposition of Property

- ☐ Redeemed prior to sale
☐ Released prior to sale
☐ Sold to highest bidder
☐ Declared purchased for U. S.

Inventory Value 

Enter inventory value of seized property opposite each item described above.

Signature of Revenue Officer

Address

100 N. Los Angeles St. Room 405
Los Angeles, Calif. 90012

Date

05-08-75

SPS COPY

Form 2433 Part 6 (Rev. 4-72)

1 TRANSCRIPT OF HEARING BEFORE HONORABLE EDWARD R. NEAHER 271a
ON APRIL 22, 1977 (pp. 271a-374a)
(Filed June 3, 1977)

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 -----x
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

5 UNITED STATES OF AMERICA, :

★ JUN 3 1977 ★

6 -against- :

TIME 4:15 P.M.
5-C-1481

7 HELEN TASSOP, et al., :

8 Defendants. :

9 -----x

10
11 United States Courthouse
12 Brooklyn, New York

13 April 22, 1977
14 2:00 p.m.

15 B e f o r e :

16 HONORABLE EDWARD R. NEAHER, U.S.D.J.

17
18
19 *Perry Auerbach*
20
21

22
23 PERRY AUERBACH
24 ACTING OFFICIAL COURT REPORTER
25

45

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

RICHARD MITCHEL, ESQ.

-and-

ARMIN J. KIKEL, ESQ.
Assistant U.S. Attorneys

GENE CRESCENZI, ESQ.

-and-

ROBERT TAFT, ESQ.
Attorneys for Defendant Tassop

1 THE CLERK: Civil hearing, United States of
2 America against Tassop, et al.

3 THE COURT: Now, Mr. Crescenzi.

4 MR. CRESCENZI: Yes.

5 THE COURT: You had made a motion which
6 perhaps ought to be disposed of at the outset, before
7 we get to the other more basic matter.

8 MR. CRESCENZI: Yes, your Honor.

9 THE COURT: That is, with respect to a motion
10 to intervene on behalf of the St. Nicholas Greek
11 Orthodox Church in Flushing, New York.

12 Now, how does that church really have an
13 interest in this controversy?

14 MR. CRESCENZI: Well --

15 THE COURT: I mean, a property interest?

16 MR. CRESCENZI: I don't know exactly. Well,
17 the property interest is this: is that --

18 THE COURT: I can understand the spiritual
19 interest.

20 MR. CRESCENZI: Well, you can't divide them.
21 You can't cut them in two. They are intermingled,
22 and of course that's supported by the treaties that
23 the United States made, guaranteeing the Roman
24 Catholic Church, and I believe the Court has copies
25 located, copies which had been lost for some time.
That's the treaty of Guadalupe Hidalgo, and I would

1 think that while the Greek Orthodox Church wasn't
2 perhaps as well organized in 1848, I would think
3 that it could claim the same political rights that
4 the Roman Catholic Church had.

5 The rights that were protected by the Roman
6 Catholic Church essentially made the United States
7 Government a partner of the Roman Catholic Church,
8 and now here, why shouldn't the Greek Orthodox
9 Church be likewise a partner, and if we take an
10 advertisement seriously, that we read in the New
11 York Times, and I don't see where Zionist establish-
12 ment is the welfare community of the United States.

13 So, this is part of a partnership arrangement
14 that we are talking about, and I think that that
15 isn't what the treaty talked about.

16 And more recently, not only the Treaty of
17 Guadalupe Hidalgo which applied expressly to
18 school operations and charitable and beneficent
19 operations, whether individually or corporately
20 owned, it's specifically set forth in that
21 paragraph of that treaty, and of course this treaty
22 was honored in claims that were made in the World
23 Court in the early 1900's, and awards were made,
24 payments were made to the Roman Catholic Church, and
25 I would think that there's no reason why the schools

1 of the Creek Orthodox Church should not be likewise
2 protected from the operations of the government, so
3 that the government, in the language of the treaty,
4 will not dispose of it as its own. Not dispose of
5 it as its own or otherwise, and I think that this is
6 exactly the language that's operative here, and
7 that's part of the treaty, and this treaty has never
8 been set aside. It's never been amended. That
9 portion of it has never been amended, and that's --
10 I think it's a serious, perhaps not widely known,
11 but it's a serious proposition that prevails, and
12 it's part of the law of the United States, and I think
13 perhaps it was an oversight by the Internal Revenue
14 to even commence these proceedings, and of course
15 in violation of their own statute, because there
16 is a statute which yields to the Title 26, 7652,
17 which is set forth in the memorandum, sets forth that
18 the treaty is -- any treaty provision shall prevail
19 in litigations involving the Internal Revenue, and
20 I don't see any reason why this should be different.

21 Now, not only do we have that, we also have
22 a treaty more recently where there's a further
23 policy with respect to the United States with the
24 Greek government, and we have an American school
25 in Greece which has the same protections, and of

1 course why shouldn't we get reciprocal -- give
2 reciprocal -- honor a reciprocal exemption to the
3 Greek Orthodox School here in the United States.

4 THE COURT: Well, I'm certain that your
5 school or the school is an accredited here by an
6 education law of the state of New York in the same
7 manner as any other private school.

8 I read what you said in your brief. It seems
9 obvious to me that the American school in Greece is
10 simply being given the same kind of status as an
11 educational institution so far as the accreditation
12 is concerned.

13 MR. CRESCENZI: And they're exempt from any
14 interference or harassment by the Greek government
15 tax collection agency, and this perhaps was something
16 that was overlooked by the Internal Revenue, and
17 this gets into the merits of the rest of the argument,
18 that has been a robber-baron behavior, pattern of
19 conduct on the part of the Internal Revenue Service,
20 take what you want first, and then make it yourself
21 by a law or some other such thing, and this is a sort
22 of Humpty-Dumpty approach to the law which is very
23 serious to us.

24 In effect, what they're doing is, they're
25 making a mockery of what you -- what your Honor is

1 here and what I am here for, and they have made a
2 mockery out of it by this Humpty-Dumpty and robber-
3 baron approach to it.

4 By Humpty-Dumpty, or when I say something it
5 means what I choose to mean, and this is exactly
6 what the Internal Revenue has done. They have taken
7 a position that no matter what we have done wrong
8 you owe this much here. This is how we are going
9 to collect it, and it doesn't make a difference
10 whether we have followed the prompt assessment,
11 and jeopardy assessment regulations, but the Second
12 Circuit Court of Appeals has ruled differently in
13 the O'Connor case, and in the other cases that are
14 set forth right here in the Second Circuit Court of
15 Appeals.

16 We have had these cases where it says strict
17 observance, and there are other cases set forth in
18 the brief, the language of which is to demonstrate
19 the illegality of the Internal Revenue with respect
20 to the importance of strict procedure administra-
21 tively and adjunctively, as well as substantially
22 under the rights protected by the Fifth and Fourteen
23 Amendments. This is all the more reasons why we
24 should be granted our motion to allow the Greek
25 Orthodox Church to intervene. We should be allowed

1 to have the three-judge court to set the constitu-
2 tional issues raised here and under the Fifth and
3 Fourteenth Amendments, as well as under the treaty,
4 as well as the fact, getting into again the merits
5 of the consent judgment that was entered into on
6 February 6, whereby it was the admission of the --

7 THE COURT: Mr. Crescenzi, I understand your
8 feelings about this matter, but if we were not
9 talking about private property of your client, but
10 were talking about property owned by a church or
11 religious body it would be a different ball game.

12 The difficulty with your position is that you
13 don't recognize the realities of the situation.

14 MR. CRESCENZI: I do, and it's the specific --

15 THE COURT: My point is this. It may be an
16 inconvenience to the students and parents to have to
17 find some other place to conduct such a school as
18 St. -- as the school is called, St. Andrews.

19 MR. CRESCENZI: St. Andrew's, yes.

20 THE COURT: St. Andrew's. But the property
21 that is in litigation here is the private property
22 of an individual.

23 MR. CRESCENZI: And that's exactly what's
24 covered in the treaty. Whether injured individually
25 or corporately owned, and Miss Tassop is a Greek
Orthodox individual.

1 THE COURT: I'm a Roman Catholic individual.
2 Do you suppose if I didn't pay my Federal taxes
3 that would give me the right to ask to have the
4 Roman Catholic Church in my behalf prevent my
5 property from being sold?

6 MR. CRESCENZI: You certainly have your
7 rights. I'd be willing to take such a case, and I
8 think we could make a prima facie case.

9 THE COURT: I'll keep you in mind if the need
10 should ever arise.

11 MR. CRESCENZI: I certainly think that the
12 treaty of Guadalupe Hidalgo is to protect
13 individual Roman Catholics.

14 THE COURT: In Mexico.

15 MR. CRESCENZI: No. Not necessarily in
16 Mexico, right here in the United States. Because,
17 even if it goes further in the language, if you
18 would read carefully, you would -- it expressly
19 states that whether in the United States or in the
20 Mexican side of the territories, and of course this
21 has been honored by cases that have been taken
22 before the World Court, and in the Indian Claims
23 Commission and the Land Claims Commission of the
24 United States, in favor of individuals as well as
25 Roman Catholic individuals, as well as the

1 institution referred to as the Roman Catholic
2 Church and the various dioceses who chose to move
3 their claims under this treaty.

4 THE COURT: Mr. Crescenzi, with all due
5 respect, in my opinion, the spiritual interests of
6 the St. Nicholas Greek Orthodox Church of Flushing,
7 New York, is not the kind of interest which permits
8 it to intervene in this action.

9 MR. TAFT: Your Honor, if I may speak to the
10 Court.

11 THE COURT: All right, Mr. Taft.

12 MR. CRESCENZI: May I respectfully except.

13 THE COURT: If you are going to take me on
14 this, I don't want to fire all my ammunition on
15 Mr. Crescenzi and have nothing left for you.

16 MR. TAFT: I'm advised by Miss Tassop that
17 there is a real property interest of the church.

18 THE COURT: What does that consist of? The
19 chapel?

20 MR. TAFT: The chapel.

21 THE COURT: Now, is that chapel, was that
22 chapel actually donated to the church or the property
23 upon? How is this chapel real property?

24 DEFENDANT TASSOP: It's housed in the school,
25 but it's run by the church.

1 THE COURT: The chapel is part of a building
2 on the school ground?

3 DEFENDANT TASSOP: Yes.

4 THE COURT: That is something to which the
5 clergy of the church will come?

6 DEFENDANT TASSOP: Right. And perform.

7 THE COURT: How frequently do they come there?

8 DEFENDANT TASSOP: Once a month.

9 THE COURT: To conduct services?

10 DEFENDANT TASSOP: Yes. Under the auspices of
11 the archdiocese.

12 THE COURT: But nevertheless, it is part and
13 parcel of the school building on private property.
14 It's just as though I had a chapel, converted one
15 of the rooms in my house to a chapel and had a
16 priest come as a matter of let's say spiritual or
17 even friendly interest and performed the religious
18 service in the house.

19 DEFENDANT TASSOP: Religious services is
20 important for this day and age.

21 THE COURT: Religious service?

22 DEFENDANT TASSOP: Very important.

23 THE COURT: It's considered important by
24 many people, and no disagreement about that. But,
25 what I'm trying to say is it is like chapels that

1 we know in the homes of very well-to-do people,
2 such as the Kennedys where Cardinal Cushing used to
3 come and say mass.

4 DEFENDANT TASSOP: They don't serve the
5 public. We do. There are weddings there. There are
6 baptisms there. There are chapels. It belongs to
7 the church.

8 THE COURT: It belongs to the church?

9 DEFENDANT TASSOP: We have the priest, and
10 the priest serves us.

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2 THE COURT: The property, it is not a separate
3 building that was donated to the Church or anything
4 like that; is it?

5 DEFENDANT TASSOP: It's a separate room.

6 THE COURT: A separate room.

7 MR. TAFT: Thank you, your Honor. That's all.

8 DEFENDANT TASSOP: It can't be just removed.

9 THE COURT: It's unfortunately indivisible.
10 But, we have to proceed in accordance with law, and
11 the cases on intervention are fairly clear that
12 there must be some tangible, practical interest in
13 the lawsuit.

14 Now, in my opinion, the interest here is of
15 a purely spiritual nature, not something that can
16 be measured in any terms other than the spiritual.
17 I do not demean the measure of the spiritual values
18 when I say what I say, but the law has to deal with
19 the temporal order, and the temporal order here is
20 unfortunately what we are concerned with.

21 So, I'm prepared now to deny the motion
22 to intervene, and I'm also of opinion that the
23 application for the constitution of a three judge
24 court falls with it.

25 Now, there are two statements of what the

2 1 issues are here, and it seems to me that except for
2 the language, both of you agree that one issue is
3 whether or not this consent judgment was entered into
4 understandingly, voluntarily, knowingly by Miss
5 Tassop when it was done before Judge Judd.

6 Now, my question is, are you prepared to go
7 through a hearing to establish that?

8 MR. CRESCENZI: To whom do you address the
9 question?

10 THE COURT: Well, I address it to you
11 primarily, because the Government has the judgment.

12 MR. CRESCENZI: Your Honor, I would be
13 prepared, I would hope to have time to prepare for
14 a trial after this consent -- I would assume that the
15 so-called consent judgment would be set aside and
16 we'd have an opportunity.

17 THE COURT: Yes. But to set aside a judgment
18 you have a heavy burden, and my question is, is it
19 all going to depend upon the testimony of Miss
20 Tassop, who was, as I understand it, present with
21 counsel at the time this was done in the presence
22 of the Court, when Judge Judd had the case and was
23 alive.

24 Now, is that what you are insisting upon?

25 A full-fledged evidentiary hearing?

3 1 MR. CRESCENZI: I'm not insisting. Whatever
2 the Court feels will give to the information
3 necessary to see the merit to this request of ours
4 to set aside this judgment, because especially in
5 light of the fact that the question of one of the
6 essential elements of that is the concession by the
7 Government, and in that language that their certain
8 liens were invalid, and I would think that just the
9 fact that the Government would now come back and say,
10 "Well, we didn't really didn't mean it that way,"
11 I would think that would be merit enough to satisfy
12 your Honor in making a decision to set aside this
13 matter for a full trial on the entire merits of all
14 of the issues here. I would think --

15 THE COURT: In the document that was submitted
16 when you say all of the issues in the document that
17 were submitted in response, it seemed to me there was
18 unanimity.

19 The Government says issue number 1, "Is the
20 defendant entitled to any relief from the consent
21 judgment" and your submission says "Is the defendant
22 entitled to a new trial," and setting aside of the
23 alleged consent judgment.

24 I see a very little difference between these.
25 Each one is asserting that's issue number one, whether

4 1 the defendant is entitled to any relief, and the other
2 number two is, "Is the United States entitled to a
3 decree for the judicial sale of the defendant's real
4 property?"

5 Those are the only issues presented from
6 what I understand are the -- what's left open here
7 in this case at this late stage. There is a judgment.

8 MR. TAFT: Well, certainly, your Honor. That's
9 very true. Those are the issues, because should
10 there be a new trial and new hearing, there again
11 are open issues to be determined.

12 I think going to the proof question we would
13 probably like a hearing to determine --

14 THE COURT: Well, a hearing is only necessary,
15 as I understand it, if there is a substantial
16 dispute in fact in which it would be necessary for
17 the Judge to decide who was telling the truth or
18 permit a party to bring something out that was not
19 available at the prior time.

20 Now, it was my understanding from what I've
21 learned about this case since it came to me, that
22 there had been a rather complete exposition of all
23 these matters at the time the consent judgment was
24 entered into, and I would like someone to point out
25 specifically what this claim for in effect a new

5 1 trial, as they say, on the issue, really hinges upon.

2 What is it in this claim that was not disposed?

3 MR. TAFT: If I may, your Honor. Apparently
4 we've been advised that the stenographer's record
5 of the hearing in Judge Judd's office is incorrect,
6 which throws off --

7 THE COURT: You are speaking of the original
8 stenographer's notes of a transcript?

9 MR. TAFT: I'm talking about the typed report
10 that you have.

11 THE COURT: May 27th, 1976?

12 MR. MITCHEL: February 6th was the date of
13 the consent judgment. Excuse me, I saw it in the
14 Court's file earlier.

15 THE COURT: What is the page reference on
16 that?

17 MR. TAFT: Well, starting right with page 6
18 in Mr. Ferrel's statement as to the validity of the
19 liens, and going on thereafter. We've been advised
20 by the Government's attorney that we can't rely too
21 heavily on the statements because they are not quite
22 the way it actually happened.

23 As I understand it from Mr. Mitchel, Mr. Ferrel
24 is here to help clarify that, and so is Mr. Newman,
25 the attorney at the time.

6 1 We feel very strongly that the particular
2 motion on before Judge Judd, and that day was a
3 motion to punish for contempt, because of failure to
4 make a payment. In the courtroom at that time,
5 payment was tendered, and Judge Judd indicated on the
6 record that that satisfied the defendant's obligation,
7 and therefore that motion, that particular motion was
8 dropped. As we then understand it from the record,
9 a conference was asked for, which did not relate to
10 the motion, but which related to the general matter.
11 At that time Mr. Ferrel was in this case and made
12 the infamous statement of the invalidity of the liens,
13 and thereafter also stated, with Mr. Newman's aid,
14 that Miss Tasson did, indeed, owe money on taxes
15 that should have been withheld.

16 I further understand that Judge Judd did not
17 know how much money was owed, and neither did either
18 side, and so he picked an arbitrary figure, which,
19 according to Mr. Mitchell's supplemental memorandum
20 was purely arbitrary, and then gave both sides a
21 period of thirty days to come in and really put
22 facts to the decision.

23 Something happened in the interim. I
24 understand the Government came in with this position,
25 but Mr. Newman never again appeared.

7 1 Part of the problem we have with Miss Tasson
2 is that she had understood clearly that an oppor-
3 tunity would be given her to prove exactly how
4 much was owed or not owed, because she knows she
5 owes something. That opportunity has never been
6 given to her.

7 This consent judgment became very one-sided
8 when counsel no longer appeared for her, and she
9 really was not a party to the full consent judgment
10 and never understood herself to be, understanding
11 only that the only thing she was going to consent to
12 in the end was a dollar amount agreed upon by her
13 attorney representing her, and by the Government.

14 That never happened, your HOnor, and therefore
15 we would like the opportunity to have a hearing,
16 find out what is really due and owing, find out if,
17 in fact, the Government was overzealous in its
18 approach to this case as we believe the Government
19 has been, settle up upon an actual amount and see
20 that it's paid.

21 That's our position, your Honor, thank you.

22 THE COURT: Well, Mr. Taft, the Governement
23 asserts on page 5 of the memorandum of which I believe
24 you have a copy, that on December 20, 1976 in
25 Washington, D.C., the defendant promised to provide

1 promptly a substantial body of information and
2 documents in support of her request for a compromise
3 of her liability, but that material was never, in
4 fact, supplied.

5 Now, are you telling me now that there is
6 such material, and that it is available, and that it
7 will change the result?

8 MR. TAFT: Well, we have been accumulating
9 material.

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THE COURT: I mean as counsel, I would feel

that you, yourselves, would want to be able to substantiate the existence of the material, and that indeed a fair and accurate analysis of it, in light of all the information which I believe has been compiled in this case would indeed change the result insofar as it is embraced in the judgment that the Government relies on.

MR. TAFT: Yes, your Honor. In three instances. There is a wquestion of -- well, literally three questions, your Honor. I will do it in reverse order.

There were two credits totaling \$13,774.58 arising from the year 1966.

I refer to that on page 4 of our answering memorandum, your Honor, in the middle of the page.

We have now compiled the checks which we have sent copies of to the Government, the notices of old payment that the Government sent to our client, and apparently those credits were either never applied or improperly applied and are still available to Tassop.

THE COURT: Are talking now about in total a credit of \$13,074, which you say was not applied; is that what you are talking about?

2 1 MR. TAFT: That's the first one. The second
2 one is on a \$6,493.02 for the year 1966.

3 THE COURT: All right, and what else?

4 MR. TAFT: The third item is \$18,543.40 in
5 that next paragraph on page 5 with respect to two
6 quarters in 1969 upon which we claimed the statute
7 of limitation had run before the Government moved
8 on it.

9 THE COURT: Next?

10 MR. TAFT: But the most.

11 THE COURT: All right, let me just get that
12 down. All right. Now, is that -- do those three
13 items represent the sum total?

14 MR. TAFT: They represent the sum direct
15 cash total.

16 The most important item relates to the pro-
17 cedural question of whether or not the Government
18 had the proper authority to seize and sell the
19 California property. If they didn't as we allege,
20 and they have, as they say in their memo, been unable
21 to come up with the proper authorization to do so,
22 then we are seeking an offset of the real value of
23 that property against the taxes due and owing.

24 THE COURT: Now, one question. The Government
25 raises there, which I haven't found any answer to, is

3 1 what would have been the net value to your client,
2 even assuming it was worth more; that is to say,
3 was the property incumbent with mortgages, liens
4 and so forth?

5 MR. TAFT: We did provide the Government in
6 the past month with appraisals on the -- totaling
7 one hundred twenty some odd thousand dollars of fair
8 value. It doesn't include --

9 THE COURT: How much?

10 MR. TAFT: \$122,000.04, and all but one
11 property is covered. The other property is worth
12 about \$15,000 vacant land that we haven't appraised
13 yet. That does not take into consideration rentals,
14 and it's our position that had the defendant been
15 given proper notices and time she would have, could
16 have arranged for the sale of these properties and
17 paid the Government the full tax, instead of the
18 \$10,000 or thereabouts that the Government got from
19 selling those properties.

20 MR. MITCHEL: If I may, your Honor.

21 THE COURT: Yes, Mr. Mitchel.

22 MR. MITCHEL: I have the material which
23 Mr. Taft referred to at the time that I prepared the
24 brief that you have before you.

25 What we have is a current letter from a real

4 1 estate agent suggesting listing prices for property,
2 and as such, I don't believe it would be credible
3 evidence in any court.

4 Their current listing price is not two years
5 ago at the time of the seizure, but in addition,
6 the point that your Honor made as to the net to the
7 Government, we still don't know, and it's the point
8 I made in my memo of whether or not any of this
9 property was mortgaged. So, the entire matter is
10 entirely speculative.

11 The defendant is simply asking that the
12 Government be an insurer of value at a distraint
13 sale. Now, any distraint sale as in a fire sale,
14 and you cannot recover. There is a provision in
15 the Internal Revenue Code that in the event of such
16 a fire sale rises to the debtor, and you're
17 redeemed by paying the amount of the purchase.

18 Miss Tassop apparently didn't do that, so the
19 property is gone, and I do take strenuous exception
20 to Mr. Taft's characterization of the seizure of the
21 California property.

22 The documents show, and I've provided them
23 to Mr. Taft, when we seized the property, when we
24 seized the property in California, now, the people
25 that seized it were California agents, they weren't

5 1 the people here in Brooklyn, but they completed
2 the seizure. The documents that we filled out
3 listed the time every delinquent count of which
4 they knew, had knowledge, there is an entire
5 listing, and it comes over to well over \$200,000,
6 and the seizure took place to each of those separate
7 assessments.

8 Now, the defendant has asserted and asserted
9 throughout the course of this litigation that with
10 respect of some of the assessments, with respect to
11 some but not all of the assessments, the assessment
12 was illegal because there was an absence of dele-
13 gation, wherein the district director's office and
14 so forth -- but that doesn't apply to all of the
15 assessments, and does not apply on the seizure
16 notices.

17 There is at least one assessment for 1973
18 quarter. It's assessed in September of '73 for
19 which there has been no challenge made to a form of
20 the assessment as to the authorization for the
21 assessment, as for the assessment authority, what
22 have you.

23 It was there that there was a balance due
24 of \$23,000.

25 Well, as long as we have one good assessment,

6 1 this entire discussion is academic.

2 Now, when I say, "good assessments," I'm
3 not stipulating that any of the other assessments
4 were less than good. So, one other matter, your
5 Honor, with respect to the California seizures,
6 with respect to the assessment authority, with
7 respect to these old credits and the dispute about
8 the credits, these were matters that were before
9 the defendant at the time she consented to judgment
10 in early 1976.

11 So, they are not matters that have come up
12 as a surprise to her or a surprise to her counsel
13 since then. In each of those matters they were
14 taking the so-called merits of the old case and
15 resurrecting at this date all of these matters for
16 reasons why she should be relieved from the consent
17 judgment.

18 We've provided lengthy reports to them. There
19 have been conferences prior to Mr. Taft's appearance
20 in the case, in which previous Government counsel
21 and the Revenue Service personnel set down and went
22 over these, and they still have to boy up to the
23 service.

24 I would suggest, your Honor, the only issue
25 of fact in the case is one to which Mr. Taft alluded

7 1 to, and that is whether or not, whether or not
2 Miss Tassop filed her 1969, her two 1969 tax returns.
3 Our records show that she did not, and apparently
4 she is prepared to testify that she did file them.

5 I have got copies of returns, but I don't
6 have -- we don't have any evidence that, in fact,
7 they were filed, and we just have the anticipation
8 of her testimony that they were filed with interest
9 and penalties accruing through the date of the
10 default judgment -- the consent judgment. The
11 balance on those two quarters came to the order of
12 twenty-five to \$27,000, less than ten percent of the
13 outstanding balance of the consent judgment as
14 amended in May.

15 Other than that, I believe we have adequately
16 explained presumably not to the satisfaction of
17 counsel, because the matter is still occurring, each
18 of these items that floated up, and if we -- I can
19 never explain them to the satisfaction of any counsel
20 to the extent that they are going to throw up their
21 hands and say, I agree."

22 Now, I am prepared to, and indeed would
23 suggest that if these matters are going to recur,
24 that they be the subject of a hearing on the entry
25 of deficiency judgment subsequent to the sale of the

8 1 real property.

2 The Government is quite hopeful that we can
3 obtain a prompt and timely sale of the real estate,
4 and our concerns are several:

5 The liability, \$297,000 plus interest from
6 February, which is an additional \$20,000. The
7 accrued interest since the entry of the consent
8 judgment is almost to the extent of the issues of
9 fact, at least as we see them. There is an order
10 entered September 19th, 1975, by Judge Judd, a
11 preliminary injunction directing that the defendant
12 file and keep current her tax deposits pursuant to
13 the procedures for Revenue Service records.

14 To our knowledge, and so far as we can discern,
15 there have not been any tax deposits since that order
16 was entered.

17 A VOICE: I would ask the Judge something.
18 Please can I say something, your Honor.

19 THE COURT: Are you counsel here?

20 A VOICE: No. I'm the head master of the
21 school.

22 THE COURT: The head master of the school?

23 A VOICE: Yes. And I would just like to say,
24 first of all --

25 THE COURT: What is it you want to say?

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A VOICE: February 6th consent judgment, the

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Government told us that the liens were invalid.

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What we want to know, in return to giving us all our

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property, is why are the liens invalid?

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MR. TAFT: I'm sorry, your Honor.

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1 MR. MITCHEL: Your Honor, the material you
2 read from my brief about the substantial body of
3 information that was to be submitted by the
4 defendant pursuant to our settlement conference of
5 December 20th dealt not so much with the merits of
6 the case, the amount of the liability from our
7 standpoint, she's not going to be able to pay all
8 of it. Whether or not we sought out every \$10,000
9 adjustment or not. When we were discussing
10 settlement, it wasn't so much along the lines of
11 merits of litigation. It was simply pay what she
12 could pay. What she could come up with. Could she
13 keep current the present taxes or enter into a
14 long-term payment program to settle the deficiency.

15 What we do, relevant to her school would
16 be to set up a program such as a profit and loss
17 statement for 1975 and 1976. A complete and sworn
18 statement of assets of herself and her school,
19 although the two are probably synonymous. Copies
20 of back income tax for herself and her school,
21 back income tax returns. Conceivably we could
22 obtain them ourselves. We could obtain them without
23 any legal -- and if we were to get that from her,
24 and we were to get that by the end of January, which
25 was fairly prompt, and give about six weeks for this

2 1 material to be obtained, and there was other
2 information that we asked for, and frankly, your
3 Honor, the only thing I obtained was a letter of
4 apology from Mr. Taft.

5 When it became clear to me the first week
6 of February that I wasn't going to get anything,
7 that the request that we had made of the defendant
8 simply so we can make some sort of analysis of her
9 institution to find out whether or not she could
10 enter into any payment program, that we were going
11 to get nothing is when I asked the Court for a
12 conference and we held that conference on the 16th
13 of March, and you directed the parties and counsel
14 to retire to a conference room, and to discuss the
15 matter. We did discuss the matter, and at that time
16 I was again promised all of the same material by
17 the 31st of March.

18 Now, I have received some material from
19 Mr. Taft relating to the credits and obligations
20 and so forth. Although I would add that that I
21 don't believe I've obtained all the material that
22 this memo refers to. But, we still have not
23 received any of this underlying financial information,
24 and we are convinced ourselves, your Honor, that we
25 are not going to get anything, and we submit that

3 1 it's fruitless to wait any longer.

2 So, so far as we are concerned, any discussion
3 of settlement expired really on the 31st of January
4 when the defendant made her informed choice not to
5 give any information to the Justice Department on
6 which we could try to frame a settlement.

7 In the interim, there are continuing accruals.
8 Apparently the defendant has followed a system of
9 filing returns more often than not when it was due,
10 and then coming in anywhere from 30 to 60 days or
11 even days later with a check by which she attempts
12 to pay the amount of the tax.

13 In the interim, accruing penalties for
14 failure to pay, for failure to make deposits, and
15 for interest, and we got together today and just
16 tried to make a rough-hand estimate as to what may
17 be -- how much may be just accrued since this case
18 was filed, and it may be \$20,000. I'm advised that
19 the defendant is delinquent on both of her mortgages,
20 and that the liability thereon is approximately
21 \$100,000, and the mortgages have to be paid before
22 we can start collecting anything on our tax liens.

23 Finally, your Honor, the end of the month is
24 the close of the school year. We are willing to
25 stay the sale of the school in the midst of the school

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year until after the school year is over.

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I urge the Court to enter an order providing that the advertisement begin in mid-May, and the sale take place in mid-June.

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So far as the motion to overturn the judgment is concerned, it is our understanding indeed we are prepared to present evidence to the effect that Judge Judd actually denied that motion but never entered a written order to the effect -- apparently -- we didn't see one. We did have a problem in that that particular hearing taking place on the 25th of June of last year, which is a matter of several weeks before Judge Judd's death, that we have not been able to find a transcript, and the reporter -- well, the reporter has not been able to find her notes for the hearing. So, we do not have a transcript of the hearing of June 25th.

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We do have a transcript of the hearing of May 27th, and I have submitted to the Court this morning a photographic copy of that transcript.

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THE COURT: That's the transcript you say it wasn't located?

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MR. MITCHEL: This was supposed to have been

5 1 filed with the Court by the reporter's office and
2 was not so filed, so I filed it myself.

3 MR. TAFT: I don't know what is being
4 referred to, your Honor.

5 THE COURT: This is a hearing on a hearing
6 transcript of May 27th. You don't have a copy?

7 MR. TAFT: I have no copy. I have never
8 seen it.

9 MR. MITCHEL: Mr. Crescenzi was at the hearing.
10 It's not a matter --

11 THE COURT: He was present?

12 MR. MITCHEL: Mr. Crescenzi was counsel for
13 Miss Tassop.

14 MR. CRESCENZI: Yes, your Honor. I think
15 that was the time when we first presented our motion,
16 and there was subsequently an adjournment.

17 MR. MITCHEL: And I did quote applicable
18 portions in my memorandum. Judge Judd, at pages 11,
19 and again at Page 12, and again at page 13, stated
20 that he would enter an order of sale, and directed
21 the Government counsel to draft an order and
22 submit it.

23 The draft order did not go forward until
24 July, after Judge Judd had died, and that was due
25 to the unfortunate death of another individual, one

6 1 of the parties to the case, Mr. Liebowitz, who was
2 the defendant mortgagee. He had died, and we had to
3 go back and clarify the parties and get a substituted
4 executrix. That took a while. So, we didn't get
5 the order out until July. The draft order is in
6 the Court's files, but it was the decision of
7 Judge Judd to enter the order.

8 Insofar as defense counsel not having a copy
9 of the hearing transcript, my understanding was it
10 was the responsibility of each party to obtain a
11 transcript. I can make a copy of the transcript and
12 send it to him. I can't do it right now.

13 THE COURT: A while ago you mentioned about
14 assembling the material with respect to this
15 California sale. Have they been provided with
16 copies of that? Do they know what you are talking
17 about?

18 MR. MITCHEL: Mr. Taft has it right in front
19 of him.

20 MR. TAFT: Exhibit A of our memorandum shows
21 deceased property sale report is being applied to
22 the 1969 year, and of course if that lien is
23 invalid, it was applied to an invalid lien and the
24 whole basis must fall, but I think we are getting
25 away from Mr. Mitchel's argument to the real question

7 1 of consent judgment.

2 If we agree that the transcript of the
3 original hearing before Judge Judd is accurate and
4 did, in fact, take place, I would be willing to
5 stop at that point, let your Honor analyze it, and
6 I think you would agree, as I have found, that
7 there was indeed no consent to that judgment. It
8 was left open and never closed. Never closed because
9 somehow Mr. Newman somehow disappeared from the
10 scene, and because Miss Tassop never had the
11 opportunity to know an exact figure and determination.

12 The fact that the lien that Mr. Ferrel says
13 was invalid, those liens were invalid, I'm willing
14 to stop on the basis of that transcript, your Honor.

15 MR. MITCHEL: May I?

16 THE COURT: Yes.

17 MR. MITCHEL: Your Honor, the Court, in my
18 opinion, stated the law correctly when it said
19 there was a burden to overturn the judgment. It's
20 a burden on the moving party. For that reason
21 the Government issued a subpoena to Mr. Newman, and
22 Mr. Newman is present in the courtroom. We have
23 brought up the Government counsel, Mr. Ferrel.
24 Mr. Ferrel was my predecessor on the case. He's
25 still with the tax division, and he is -- we have

81 brought him up here from Washington today. Both
2 of them are prepared -- well, Mr. Ferrel is
3 prepared to testify. Mr. Newman's here under
4 compulsion of the subpoena as to what transpired.

5 Now, if Miss Tassop has any evidence to offer,
6 it isn't reflected in the trial transcript -- the
7 hearing transcript, and I think it behooves her to
8 put on that evidence at this time, this is, so far
9 as the Government is concerned, a hearing on the
10 Rule 60 motion to overturn the judgment. We have
11 therefore brought up other witnesses, not the
12 witnesses in chief, as rebuttal witnesses, and it's
13 not altogether clear what the nature of the challenge
14 under Rule 60 for relief of judgment and new trial
15 as opposed to simply the collection of what's going
16 to be a deficiency judgment. Miss Tassop seeks
17 entire voiding of that judgment, and to set the
18 matter down for trial.

19 So, we can discern from the transcript, from
20 Mr. Ferrel's recollection who was there. Miss Tassop
21 made a knowing, informing choice, and her knowledge
22 is reflected on the transcript.

23 Now, if my assumption is that she had to at
24 this point, to stand and to testify that something
25 else happened, something underhanded, and indeed the

1 statements made by the counsel in your chambers a
2 month ago suggested that there was almost a
3 conspiracy between Mr. Newman and Mr. Ferrel, and
4 if this is the case, I think they should put on
5 evidence and they should put on this evidence this
6 afternoon.

7 (continued next page)

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MR. TAFT: Mr. Mitchel speaks of a new trial as if there had been a trial. Unfortunately, there never has been a trial, and a tax payer has found herself with a so-called consent judgment, whereas the record of that hearing shows all by itself that she never consented to a specific obligation. It is not complete, and she's willing to testify to that, but I don't know how that will differ from what the Court can read in that transcript itself. Of course, we're prepared to do so.

THE COURT: All right, now, on page 5 of the transcript of February 6th, 1976 Mr. Newman states as part of a statement there, "I just wanted to make sure that Miss Tassop understands on the record what the terms of the settlement will be, and what it means in terms of her obligations, and, Mr. Ferrel, would you want me to have her explain what this is?" Mr. Ferrel says, "Yes."

The witness must be Miss Tassop, because she was then on the stand, according to the opening statement, and in "the terms of the proposed settlement will be that the defendant, Helen Tassop, will admit and confess judgment for all."

Now, over at page 6, the Government concedes that the liens for which notice of demand was given

2 1 on May 18th, and August 11th were not valid liens.

2 Now, and there's no question who the witness
3 is, because the witness is Miss Tassop, and the
4 Court points out that what she is saying is under
5 oath.

6 Now, then Mr. Newman down at the bottom of
7 page 7, "I also want to explain to Miss Tassop very
8 clearly that the confession of the judgment by
9 Miss Tassop will result in a new lien being valid
10 against all property that is owned by you," which
11 I presume means Miss Tassop, "and the Government has
12 the power under this to take immediate action to
13 collect the judgment."

14 Now, let's see, "The judgment will be for
15 tax, interest and the penalties. However Mr. Ferrel
16 has agreed that he would consider the acceptance
17 of a new offer and compromise, that we will prepare
18 to show that assuming that the school can remain
19 current on its current tax liabilities," and so
20 forth.

21 Now, that is just a new offer and a compromise.
22 I don't know what that relates to precisely, but
23 Mr. Ferrel makes clear that "the fact that the
24 Government is willing to consider such an offer does
25 not in any way mean that this is not a binding

311a

judgment."

Mr. Newman says, "Do you understand this," and the Court interjects, "That means that if the Government decides that the offer is not acceptable, the judgment is still there."

"THE WITNESS: But I do have a chance to mortgage the property and raise money to pay the Government which I originally wanted in 1972?"

And Mr. Ferrel says, "You have an opportunity to submit an offer in compromise which I will look and make a recommendation one way or the other."

And then the Court, on the bottom of the page explaining to Miss Tassop, "When you pay your salaries you owe the tax, the withheld tax too, and you are not really current with your staff unless you make your monthly deposits."

Now, let's see where I saw something else.

MR. TAFT: Well, I think the essence, your Honor, is on page 17. You are perfectly right in the development.

THE COURT: Now, then the Court says, "Miss Tassop, what I understand Mr. Ferrel has said, is that he will press the case unless he has a judgment entered today for the amount which I understand you have been permitted to." I guess that's

312a

garbled.

"I suggest the figure of \$275,000, which is a little less than the complainant asked, and will be subject to an adjustment in thirty days by motion by either side. Are you willing to do that?

"THE WITNESS: Yes."

Now, I suppose the adjustment is what with respect to what the determination? Credits of one kind?

MR. TAFT: The invalid liens and how they're effected.

THE COURT: Well, maybe that's an issue that we have.

MR. TAFT: Well, that's what page 17 means, your Honor, where she says, "I mean, as long as I can come back in thirty days and say, 'I am sorry, I think it is less.'"

She knows she owed something.

THE COURT: Well, "Subject to modification as to the amount by either side within thirty days," I take it opens the door to the Government as well.

MR. TAFT: Yes, it certainly does.

MR. MITCHEL: Excuse me, and it was, in fact, so amended.

THE COURT: It was so amended?

5 1 MR. MITCHEL: To \$270,000.

2 MR. TAFT: And Mr. Newman disappeared from the
3 scene, and that's one of the reasons the defendant
4 was left having believed that Mr. Newman was going
5 to submit his motion papers to reduce it, and it
6 never happened, and she was never made aware.

7 THE COURT: Really what you are suggesting
8 is that this judgment is still open to a thirty day
9 motion, but hasn't the thirty days gone by that was
10 contemplated by this arrangement? In fact, the
11 fact that occurred in 1976, well over a year ago,
12 aren't you in the position where you do have to
13 come forward with something that would really warrant
14 a change in that judgment as it now stands? I must
15 say, that even though it is a consent judgment, one
16 would have to conclude that it was a judgment entered
17 with full understanding of its legal consequences,
18 but with the understanding that within a certain
19 limited period of time it could be changed to reflect
20 some adjustment, and the Government tells me that
21 an adjustment in favor of the Government was actually
22 made because of something else that came up.

23 Now, you're suggesting that despite lapse of
24 time there is still room for an adjustment. I take
25 it the other way.

6 1 DEFENDANT TASSOP: May I speak?

2 THE COURT: I don't know, Miss Tassop.

3 You're represented by very competent counsel here,
4 and I think that if you want to discuss something
5 with Mr. Taft that you want him to point out to the
6 Court, you may feel free to consult with him. I'll
7 give you time to do that. But, I don't think it
8 will help you any to be making statements to the
9 Court on the record.

10 DEFENDANT TASSOP: I just wanted to mention
11 something to him.

12 MR. TAFT: Your Honor, can we have just a
13 couple of minutes to straighten procedure out in
14 the Courtroom?

15 THE COURT: Yes.

16 MR. NEWMAN: Your Honor, if I may, I'm
17 Mr. Newman, and I just wish to -- I have very
18 strong sympathies towards Mrs. Tassop's plight.
19 However, I want to correct the record, and I believe
20 the file will properly reflect that I was, on
21 motion, relieved from my duties as attorney on my
22 application in this case, and Judge Judd did, in
23 fact relieve me. So it was not as if I just
24 disappeared into the never, never world.

25 THE COURT: I understand. Well, I don't know.

7 1 Unfortunately a one vital transcript seems to have
2 gone to never, never land. It's unfortunate. I
3 take it every effort has been made to try to track
4 it down.

5 MR. MITCHEL: The transcript that we've
6 looked for, it's a transcript of the last hearing
7 Judge Judd held. Mr. Ferrel and Mr. Crescenzi
8 appeared for the parties as they appeared in the
9 early May hearing, and Mr. Ferrel is here in the
10 courtroom and, indeed, one purpose of his being
11 here since I can't find the transcript is, he can
12 testify as to what happened.

13 THE COURT: I see.

14 MR. MITCHEL: Which is admittedly an unusual
15 procedure. So far as our efforts to locate a trans-
16 cript, first, there is no transcript as such. We
17 have made an effort to locate the stenographer's
18 notes. The stenographer -- and I do not know her
19 name -- was previously with the official court
20 reporters and is no longer with them. The United
21 States Attorney's Office contacted her and she
22 recalled the hearing and came down to the reporter's
23 office this morning, so I am acknowledged, and
24 attempted to find those notes, the reporter's folio,
25 and was unable to do so.

8 1 We were even prepared to go so far as to
2 issue a subpoena duces tecum to her. We didn't,
3 in fact, get to her in time. In view of her state-
4 ment she couldn't find her notes. We have no reason
5 to disagree.

6 THE COURT: That should never happen in a
7 court, and it's very distressing to hear it.

8 Well, I think as long as Mr. Ferrel is here
9 we might as well, and Mr. Newman as well, you might
10 as well --

11 MR. MITCHEL: Mr. Crescenzi was counsel for
12 Miss Tassop at the latter hearing.

13 THE COURT: And that will give Mr. Taft an
14 opportunity to cross-examine them. I'm suggesting
15 they take the stand, not necessarily because I'm
16 putting a burden on the Government, but because they
17 are available, and if you wish to ask them some
18 questions, as you indicated Mr. Ferrel is here, to
19 indicate what he recalls of what took place in the
20 last session before Judge Judd, I'll certainly be
21 happy to hear from him.

22 MR. MITCHEL: I'm prepared not only to do
23 that, but I'm prepared to examine Mr. Ferrel in the
24 subject of what took place in the 6th of November,
25 since there have been allegations concerning that
hearing.

1 THE COURT: Well, I would assume you mean
2 that because the transcript is here, though, it
3 shows what went on.

4 MR. MITCHEL: Well, there are certain --

5 THE COURT: Well, you may have something in
6 mind.

7 MR. MITCHEL: Right. If that would be for
8 the best.

9 THE COURT: Well, all right. If Mr. Ferrel
10 is available.

11 MR. TAFT: Your Honor, could we have two
12 minutes so I can speak with my clients first,
13 please?

14 THE COURT: All right, you want to take a
15 few minutes break. We will take ten minutes.

16 (Whereupon a short recess was taken.)

17 (Whereupon the folloiwng took place after
18 the recess.)

19 THE COURT: All right, are you going to call
20 someone now?

21 MR. MITCHEL: Yes, your Honor. Mr. Newman
22 has requested, since he is here under subpoena and
23 is a local, practicing attorney, if he could go
24 first. and it's perfectly amenable to me, and for
25 that reason we will call Peter Newman.

2 1 P E T E R R . N E W M A N , having first been
3 2 duly sworn by the Clerk of the Court, was examined
4 3 and testified as follows:

4 THE CLERK: What is your full name?

5 THE WITNESS: Peter R. Newman, N-e-w-m-a-n.

6 DIRECT EXAMINATION

7 BY MR. MITCHEL:

8 Q Mr. Newman, are you an attorney authorized
9 to practice in the state of New York?

10 A I am.

11 Q And during the course of this litigation, did
12 you have the occasion to represent Helen Tassop?

13 A Yes, I have.

14 Q And do you recall roughly during what month
15 you represented Miss Tassop?

16 A It was roughly from the end of November 1975
17 through the end of April or the beginning of May 1976.

18 Q Were you here in the District Court on
19 February 6, 1976?

20 A I was.

21 Q Do you recall what brought you to the
22 courthouse that day?

23 A Yes. There was a motion present to punish
24 Miss Tassop for contempt.

25 Q And who was representing the Government at

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Newman-direct

1
2 that motion?

3 A Mr. Brian Ferrel.

4 Q Do you recall a conversation you had with
5 Mr. Ferrel prior to the commencement of the motion,
6 commencement of the hearing, at which time the subject of
7 settlement came up?

8 A Yes, I do.

9 Q Would you relate to the Court what transpired
10 in your conversation with Mr. Ferrel?

11 A In substance, in that conversation Mr. Ferrel
12 had indicated that they would be amenable to some type of
13 settlement. That was the first conversation.

14 There were several conversations with him
15 that day.

16 Q Would you recall specifically the conversation
17 relevant to the subject of the entry of consent judgment?

18 A Yes, I do. As a result of several conversa-
19 tions I had with Mr. Ferrel and with my client, Miss Tassop,
20 Mr. Ferrel and I had agreed that we would have a settlement,
21 whereby Miss Tassop would consent to the entry of a
22 judgment against her in an amount to be determined at
23 some time, without a firm amount, to be determined at some
24 time in the future, and the Government would consent that
25 the tax liens as imposed against Miss Tassop and St. Andrew's

320a
Newman-direct

Academy were invalid.

Q And was it clear in your own mind that they were, that this was an exchange? Each side was making an agreement on behalf of the other ?

A Yes, it was.

Q To the best of your recollection, did you have the adequate authorization from your client to enter into that?

MR. TAFT: Your Honor, this is a ticklish type of question and answer, and I must assert privilege on the part of the questions relating to what went on between the client and the attorney. As far as other details, fine. But, on that part I certainly must request that privilege be applied.

THE COURT: Well, on what basis is the judgment being sought to be satisfied? Isn't this waived?

MR. TAFT: Well, it's being sought to be set aside on the basis that the incompleteness of judgment, that amount to be determined in the future was never made, and so it was never completed. I found out in this new transcript that I just received or apparently Judge Judd still had the matter open, and it was open even going into June.

Newman-direct

Apparently he. himself, continued this particular question.

THE COURT: Now, I noticed, however, that there was a docket entry as of May 27, 1976 amending and correcting the judgment and amount.

MR. TAFT: Well, that's right. The Court, Judge Judd, said that since the order correcting the judgment is something I've granted before, I'm going to sign that because that's just completing the record, and prior to that he said to Mr. Crescenzi, "I'll give you a time in late June. I'll postpone this so you can try to work out something," and that something appears on page 3, and that is a motion to amend the judgment, and according to the statement which will be submitted to Judge Judd, Judge Judd had recognized the fact that the statement of the account had not yet been submitted. It was apparently still open, and even open after he died, and as you were very quick to perceive, I guess that's really what we are asking for, that we still go to that statement of account, and in so doing through the question of the effects of the invalid lien.

THE COURT: Well, all right. But, now, what

Hewman-direct

is the precise question that has been asked here.

Let me hear it once again.

(Whereupon the question was read back to the Court.)

THE COURT: Well, it call for a conclusion, but it is directed to this lawyer who at that time was her representative. While I suppose an agent cannot prove his authority by his own statement, I think I should take his answer as to whether he believed he had that authorization. So, I'll overrule your objection on that ground. You may answer that question, if you could still remember what it was.

A Yes, I do, and my answer is, yes, I did have adequate authority to enter into it, in my belief, and if I may add a supplement, the consideration that was an additional part of the conversation with Mr. Ferrel that had left off previously, there was another part that the Government would use its good faith to enter into some sort of payment arrangement, the details of which would be worked out depending upon information to be submitted by Miss Tassop.

Q In your presence were any promises made by Mr. Ferrel that such a payment plan would, in fact, be worked out?

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Newman-direct

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2 A The only promises that were made is that the
3 Government would use its good faith to consider working
4 out such a plan. No specific promises were made.

5 Q And did you make statements to your client,
6 Miss Tassop, to the effect that the Government would
7 approve the payment plan?

8 THE WITNESS: Mr. Taft, no objection to that?
9 I'm asking whether this is a privileged communica-
10 tion?

11 MR. TAFT: I've raised the question of
12 privilege as to a general question.

13 THE COURT: Well, I think we had nto better --
14 but I think if there's any doubt as to specific
15 questions, you had better listen to them and let me
16 know your point of view. Read the question back
17 once again, please.

18 (Whereupon the question was read by the
19 reporter.)

20 THE COURT: That the Government would
21 approve the payment plan?

22 MR. TAFT: I would object to that as between
23 the client and attorney.

24 THE WITNESS: I'm sorry, you would object?

25 MR. TAFT: Yes.

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Newman-direct

MR. MITCHEL: May I, your Honor? I have another point subject to the objection based on the privilege.

THE COURT: Yes.

MR. MITCHEL: Mr. Crescenzi, in his memorandum of June 22nd, 1976, makes the statement at page 13, "The dialog which took place between the attorney of the plaintiff and the attorney of the defendant in the chamber was not fully understood by the defendant. Her attorney gave her the impression that the Government would really accept a compromise and permit her to mortgage the property in order to pay the taxes, which would be agreed as a result of the compromise and the settlement."

The memo says that her attorney, Mr. Newman, gave her impressions.

Now, to say it was admittedly in the brief, it's admitted. In other words, I think it serves as any assurances made by Mr. Taft to --

MR. MITCHEL: To Miss Tassop.

THE COURT: By Mr. Newman.

MR. MITCHEL: By Mr. Newman to Miss Tassop.

THE COURT: I agree with that. I overrule the objection on that ground.

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Newman-direct

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THE WITNESS: Your Honor, may I request,

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would you repeat the question, please.

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(Whereupon the reporter read back the ques-

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tion.)

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A The answer is definitely not. No time did

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I make such a statement, nor could I have, since there was

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no payment plan in effect at that time. The only

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statement that I -- that we had worked out, which is I

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believe part of the transcript, to my recollection, that

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was a transcript before Judge Judd, and the only promise

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at that time that was made is that -- which I am sorry --

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which was made at that time was that the Government would

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use good faith, and my recollection is that Mr. Ferrel

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said that he would call me back within a very short period

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of time with a question as to whether the Government would

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approve a refinancing or a partial refinancing of the

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premises, and applied some of the proceeds, the excess

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proceeds from the refinancing towards the premises, and

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the only question came up is what about the cost of the

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refinancing and who would bear the cost of the refinancing.

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MR. MITCHEL: Mr. Newman, I have no further

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questions of you.

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(continued next page)

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Newman-cross

2 CROSS-EXAMINATION

3 BY MR. TAFT:

4 Q Mr. Newman, did you and Miss Tassop and
5 Mr. Ferrel ever speak together about these matters?

6 A Do you mean with just the three of us present?

7 Q Yes.

8 A Yes, I believe we did.

9 Q Could you tell us about such conversation or
10 conversations?

11 A Can you give me some point in time?

12 Q Well, let's see --

13 A When you said, "ever," that's a long period
14 of time.

15 Q Let's say on the date of this hearing in
16 February that apparently was where the allegedly consent
17 was obtained.

18 A I believe we did have a brief conference.
19 My recollection is that we did. I'm not 100 percent sure
20 whether there was one with just the three of us present.

21 Q I see. What was the importance in that give
22 and take with the Government? Miss Tassop was making her
23 consent. The Government was admitting that the liens were
24 invalid?

25 A In what sense?

Newman-cross/Taft

Q Well, why were you asking that the Government make the concession?

A That was Miss Tassop's belief. As a result of the conversation that I had with Mr. Ferrel, I had a conversation with Miss Tassop relating to her thoughts on the matter, and I don't know whether I'm permitted to interpose my conversation at this point or whether I'm directed to or does Miss Tassop waive privilege to this conversation?

Q I'm asking you a direct question. Why was it important to you, and what was the meaning of it in part of this overall procedure? What relevance did it have in this procedure?

A Well, I'm answering that by the relevance came from a conversation that I had with Miss Tassop.

Q I see. And did you intend at a later day as part of any application towards fixing an exact amount due and owing the Government to use the invalidity of the liens for offsetting purposes?

A The thought had crossed my mind, yes.

Q And did you so advise your client that that thought had crossed your mind? That you would investigate it further, and that would be part of your moving papers?

A I also advised her at the time.

Newman-cross/Taft

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2 Q Well, no. Did you advise her -- please
3 answer the question as I have asked it, sir.

4 A I'm sorry. Would you read back the question;
5 the precise question?

6 (Whereupon the reporter read back the previous
7 question.)

8 A That's a pregnant question, because I didn't
9 quite advise her that in those particular terms. What I
10 did advise her was that there was a remote chance, and I
11 was very careful to stress the fact that I felt that the
12 chance was kind of remote, remote chance that she might
13 have an offset for damages caused by the invalidity, caused
14 by the seizure due to invalid liens. I further advised
15 her that while the -- there are certain sections of the
16 rules that prohibit an action against the Government for
17 torts committed in the collection of a tax, that under the
18 Federal Tort Claims Act there may be some exceptions
19 to the exception; such as where there would be gross
20 abuse or gross overreaching was not within the
21 contemplation of the exception, but at no time did I give
22 her an assurance that that was absolutely the law, and
23 I also explained to her very carefully many times, though
24 she felt we almost didn't want to hear that part, the
25 point that was made earlier in this courtroom, that if the

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2 Government seizes property, and only one of the liens is
3 valid, they have an absolute right to seize that property.

4 Q So you had considered the fact that there
5 were invalid liens, that the Government was admitting it,
6 and that you had the opportunity to come back within 30
7 days and submit your side of what the true taxes was; is
8 that not correct?

9 A Yes. The purpose for undergoing this
10 compromise arrangement was to cut through all the nonsense
11 and get to the real heart of the matter rather quickly,
12 and again, this was after a conference with Miss Tassop
13 that day, in which I asked her whether she did, in fact,
14 owe sme back taxes.

15 Q All right. So the real heart of the matter,
16 in your opinion on that particular day, was how much was
17 due and owing; is that correct?

18 A The heart -- there were two aspects to this.
19 One was how much was due and owing. The second question was,
20 whether there would, in fact, be any damages for which
21 Miss Tassop might have any remedies as a result of the
22 invalid liens.

23 Q I see. So those were the two issues in your
24 mind. And what about the 30 days? Was that your idea that
25 you could come back within 30 days and submit additional

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Newman-cross/Taft

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2 argumentation or try to determine what the true tax was?

3 A Don't recall how the period of 30 days
4 came about. Whether it was mine, Mr. Ferrel's suggestion,
5 the Court's suggestion.

6 Q What steps did you take after this conference
7 to ascertain what the true tax due and owing was, and
8 possibly what damages might be available to Miss Tassop?

9 A The initial step that I took was that I
10 advised Miss Tassop to obtain the services of an accountant,
11 to go through her books and ascertain what the true and
12 correct amount of the tax due and owing on each of the
13 individual returns. When I say, "the individual," the
14 individual payroll tax returns was, and to ascertain what,
15 in fact, her true payroll was, and also to pull the
16 checks out that she had given to the Government in payment
17 of the liens and to try to identify or match the payments
18 against the liabilities as we believed them to be.

19 We also had some conferences with the
20 Government. I believe there was one of about a day, where
21 I was in the Government's office with the Special
22 Procedures Unit, wherein we requested various information
23 be obtained from the Government as to the application of
24 the checks, once Miss Tassop had the checks available.

25 There was also a question where I sat down

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2 with the Government and asked them precisely what the
3 meaning of this -- as I recall there was a two-page
4 spread sheet showing liabilities, payments, penalties,
5 and seeing what the meaning of each entry was, and
6 requested that the Government research its computers to
7 ascertain what the documental backup was for each entry on
8 the sheet.

9 Q And was this all done within that 30-day
10 period?

11 A Oh, absolutely not. I found Miss Tassop to
12 be totally uncooperative.

13 Q That's not what I asked you. I just asked
14 whether it was done within the 30-day period?

15 A No. It was not done within the 30-day
16 period.

17 Q What happened at the end of the 30-day
18 period?

19 A An extension of time was requested.

20 Q By whom, from whom?

21 A It was requested of Mr. Ferrel by myself as
22 attorney for Miss Tassop.

23 Q And was it granted?

24 A I believe it was.

25 Q Well, you either know or you don't know.

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2 A My recollection is that it was. I would have
3 to --

4 Q You acted on the assumption that it certainly
5 was, because you said that you and Mr. Ferrel continued
6 discussions?

7 A That's correct.

8 Q How long an extension did you obtain?

9 A My recollection was that there were two
10 extensions, and that the third extension -- I'm sorry,
11 after the second extension --

12 Q How long were these extensions for?

13 A I don't remember at the present time, but
14 that should be a matter of record in the Court. I would
15 have to check my notes on that.

16 Q Were they 60 days or 90 days?

17 A I do not recall. It was until -- the best
18 recollection I can give you -- it was until around the
19 end of April.

20 Q That's fair enough. And what happened then?

21 A Miss Tassop requested that I take certain
22 actions that I could not justify in my own mind, and I
23 requested to be released from the case, and Judge Judd
24 granted leave to be relieved of counsel for the case.

25 Q At the time you requested to be relieved from

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2 the case, did you advise the Court that the time period
3 was still open as to putting this data together for the
4 Court to determine what was exactly due and owing?

5 A My recollection was at that meeting, that
6 that was the end of the final extension of time, and I
7 believe the Court did grant Miss Tassop an additional
8 period of time, both to retain additional counsel and to
9 try to work out whatever she had to work out.

10 Q So to the best of your recollection, sometime
11 going into May of 1976, that time period was still open;
12 was it not?

13 A That's correct.

14 MR. TAFT: No further questions.

15 THE WITNESS: Your Honor, if I may, may I
16 have leave to act as my own counsel in this case,
17 because there was a statement made on the record
18 that I would like cleared up.

19 THE COURT: On which record?

20 THE WITNESS: Well, earlier in conference
21 before your Honor there was a question made that I
22 conspired with Mr. Ferrel to somehow deprive
23 Miss Tassop of her rights. I would like to say that
24 at no time did I conspire with him to do anything
25 which in my judgment was or would be adverse to

1 Newman-cross/Taft

2 Miss Tassop's best interests.

3 THE COURT: All right, do you have any
4 redirect?

5 MR. MITCHEL: No.

6 THE COURT: Now, one thing that I would
7 like to perhaps your view upon, Mr. Newman.
8 When you speak about this consent judgment proposal
9 being accompanied by a good faith effort on the part
10 of the Government to entertain something, I know
11 you've been in court here, but you were in the back
12 row and may not have heard this. There was a
13 hearing, as you know, on February 6, 1976. You
14 were there.

15 THE WITNESS: Yes, your Honor.

16 THE COURT: With your client. Mr. Ferrel
17 was there.

18 THE WITNESS: Unfortunately, your Honor,
19 I think the transcript on this hearing also is
20 somewhat at variance with my recollection of the
21 transcript. In fact, I had discussed this point
22 with Mr. Ferrel before I was relieved, and Mr. Ferrel
23 and I had agreed that we would somehow sit down and
24 see if we could iron out the differences, because
25 we were not in 100 percent agreement that the

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transcript was incorrect in --

THE COURT: Let me ask you if it is incorrect. Beginning on page 7, the statement by you. I also want -- I'm reading, "I also want to explain to Miss Tassop very clearly that the confession of a judgment by Miss Tassop would result in a new lien being valid against all property that is owned by you," meaning Miss Tassop.

THE WITNESS: Yes.

THE COURT: "And the Government has the power under this to take immediate action to collect the judgment. The judgment will be for tax," I suppose it means taxes, "interest and the penalties. However, Mr. Ferrel has agreed that he would consider the acceptance of a new offer and compromise that we will prepare to show that assuming that the school can remain current on its current tax liabilities which will permit the school to mortgage the property or go through fund-raising efforts in order to obtain funds to save this judgment and, as part of the offer and compromise, they would then consider a payment or interest."

I don't know what that means. "They are not guaranteeing they will do this, but there is a

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promise they will look at it in good faith."

Is that essentially what you mean by what you testified to earlier as to the Government in good faith would consider proposals to pay the judgment?

THE WITNESS: No. To allow Miss Tassop to pay the judgment, your Honor.

(continued next page)

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THE COURT: Well, no. To allow Miss Tassop to pay the judgment. That's what this is referring to.

THE WITNESS: That's substantially what I mean, your Honor, and that is substantially my conversation.

THE COURT: The only reason I raised the question was a new offer and compromise would suggest that once the judgment, there were still problems ahead; you understand?

THE WITNESS: Oh, yes. We knew that.

THE COURT: All right, okay.

THE WITNESS: It was hoped to resolve this through the offer in compromise.

THE COURT: That part of the transcript correctly reflects what you told Miss Tassop.

THE WITNESS: Yes, it does, your Honor.

THE COURT: Now, where is the part that you say does not?

THE WITNESS: There was some, if I may.

THE COURT: Do you want to take a look at it?

(Whereupon the transcript was handed to the witness.)

THE WITNESS: Thank you.

THE COURT: I mean, is it something that would

2 1 be material?

2 THE WITNESS: That is the question I think
3 it was more a question of clarification and straight-
4 ening out details in substance.

5 THE COURT: Perhaps you might point out what
6 it is that you referred to, so there won't be any
7 question hanging unanswered while you're available.

8 THE WITNESS: Well, on page 4, bottom of
9 page 4 where -- page 25 they have me saying,
10 "MR. NEWMAN: Fine, no further questions, your
11 Honor." I believe that's not me.

12 THE COURT: You said page 4?

13 THE WITNESS: Page 4, line 25. Page 4, line
14 25 at the bottom, the comment, "No further questions,
15 your Honor," would be a continuation of the direct
16 by Mr. Ferrel rather than myself making this state-
17 ment.

18 THE COURT: All right.

19 THE WITNESS: On page 5, line 10, there's
20 a word "moved as well," should be moot, as opposed
21 to "moved."

22 On page 6, line 9, they have Mr. Ferrel --
23 I'm sorry, line 5 and line 9, the names Newman and
24 Ferrel are transposed. My recollection is that I
25 requested the conference in chambers with a court

3 1 reporter, and Mr. Ferrel was before Judge Costantino
2 rather than myself.

3 Page 6, line 23 where I'm making a statement,
4 "We are not questioning the validity of the assess-
5 ment purposes." The word "purposes" should be
6 process.

7 THE COURT: Process?

8 THE WITNESS: Yes. Meaning process, as a
9 whole.

10 Unfortunately, where we have the word on
11 line 23, "liens for the quarters," my recollection
12 of this, and I do not recall which one specifically
13 at the time, is that there were certain specific
14 liens which we did concede were valid, and the
15 transcript does not reflect which particular liens,
16 and my recollection of it is that there were only
17 certain specified liens that were conceded by the
18 Government to be invalid, that some were conceded
19 to be valid by Miss Tassop.

20 THE COURT: I see.

21 THE WITNESS: And on that point as to which
22 ones, I honestly have no recollection of what
23 specific liens there were.

24 On page 9, line 15 the word "depositors"
25 I believe should be depositories.

With those exdeptions, I believe it's substantially correct, your Honor.

THE COURT: All right, thank you very much. All right, I think you may consider yourself excused.

THE WITNESS: Thank you, your Honor.

(Whereupon, the witness was excused.)

MR. MITCHEL: We would call Mr. Brian Ferrel.

B R I A N F E R R E L, having first been duly sworn, by a Clerk of this Court, was examined and testified as follows:

THE CLERK: Will you state your full name for the record, please.

THE WITNESS: J. Brian Ferrel, B-r-i-a-n F-e-r-r-e-l.

DIRECT EXAMINATION

BY MR. MITCHEL:

Q Mr. Ferrel, by whom are you presently employed?

A The Tax Division of the Department of Justice.

Q And you're an attorney authorized to practice law in what state?

A The District of Columbia.

Q During what period of time were you assigned to handle this case?

A Between I'd say late June or early July, 1975,

and I believe it was probably August or September of 1976, because we had had a reorganization within the Tax Division of the Department of Justice, and my territory was changed from the northeast to the central section of the country.

Q Do you recall the hearing before Judge Judd on February 6th, 1976?

A Yes, I do. Which one?

Q February 6th, 1976?

A Yes, I do.

Q Why was the hearing initially commenced?

A The hearing was commenced on two motions; one being the Government's motion to have Miss Tassop held in contempt of the Court's preliminary injunction issued in September for failure to remain current on the payment of employee's withholding income, withholding and social security withholding. The other was for a protective order in connection with some discovery that had been initiated by Mr. Newman, which had been commenced on the day before, February 5th, and was supposed to continue the afternoon of February 6th here in the courthouse in Brooklyn.

Q Incidentally, what was the status of the case?

A The case was in the final discovery stages, and trial was scheduled for February 20th, 1976.

Q Do you recall your discussions that day prior

6 1
2 to the hearing with Mr. Peter Newman with respect to settle-
3 ment or a general disposition of the litigation?

4 A Yes, I do.

5 Q Would you reconstruct where these conversa-
6 tions took place, and essentially the substance of the
7 conversations with Mr. Newman?

8 A Okay. I had been in Judge Costantino's
9 chambers, which are on this floor, and I had gone back
10 upstairs to the sixth floor to Judge Judd's chambers,
11 and I was sitting in the courtroom, and our case had been
12 taken off the calendar and placed last on the calendar,
13 and while I was waiting for it to be called, Mr. Newman
14 approached me, and I think I was sitting in the back of
15 the courtroom in one of the pews, and asked me if I would
16 consider compromising the Government's tax claim again
17 Miss Tassop, and I said I wouldn't. We were getting too
18 close to trial and it was such a substantial amount I
19 would not compromise our \$290,000 claim.

20 He left at that point in time and went to the back
21 of the courtroom and spoke with Miss Tassop, came back to
22 me subsequently and said "I think we can work this out,"
23 and asked me if I would agree to a consent judgment for the
24 amount of the tax liability. If I would concede the
25 validity of the tax liens. He advised me that it was a

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matter of principle with Miss Tassop with respect to the validity of the liens. I said that in return for a consent judgment for the amount of tax liability I will agree to state on the record that the liens are invalid.

Q And --

A And there's more.

Q I'm sorry.

A Excuse me, I paused.

At that point in time Mr. Newman got up, and I believe he left the courtroom and went outside to talk to Miss Tassop. I followed him out and I went up the hall, and I watched Mr. Newman talking to Miss Tassop down at the end of the hall, and then he motioned me to come down, and the whole proposal, Mr. Newman explained the whole proposals to -- I was there. He asked her if it was all right with her. She nodded affirmation, and she asked if it was all right with me, and I said it was all right with me.

Q Do you recall at any time making any promises or statement to Helen Tassop or to Peter Newman about her taxes or the judgment pursuant thereto would, in fact, be compromised by the Justice Department?

A No, I did not.

Q Do you recall your comment on the record at

page 6 of the transcript, I'm quoting beginning at line 17,
"Now, the Government will concede that the names as allegedly
stated for which notice of demand was given on May 18, 1972,
and August 11th, 1972, were not valid liens."

Do you recall that statement?

A Yes, I do.

Q Was that statement made? Was that statement
made by you pursuant to these discussions with Mr. Newman?

A Yes, it was.

I might add, we are talking about conceding the
validity of the liens. That it was merely the liens based
on those two assessments. It was not all of the liens
based on some possibly sixteen orders of the tax liability
that were involved in the litigation. It only covered
possibly six or seven quarters.

Q Did you, as Government counsel, concede that
the taxes were not owed?

A Did I concede that the taxes were not owed?

Q For the quarters in question?

A Absolutely not.

Q Do you recall a later hearing on or about
June 25th, 1976, in this proceeding?

A Yes, I do.

Q Before Judge Judd?

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A Yes.

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Q Would you just recite for the Court essentially what happened at that period?

4

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A At that point in time, June 25th, 1976,

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Mr. Crescenzi was representing Miss Passop, and he had

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filed a lengthy motion in which he had raised the treaty

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of Guadalupe Hildalgo, and a number of other provisions

9

and tax treaties which was going to be heard on that date.

10

Now, that is the hearing the Judge gave Mr. Crescenzi

11

until that date to file these papers at an earlier hearing

12

in May of 1976, May 27th, I believe.

13

Mr. Crescenzi argued essentially the same point that

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he argued here today about the treaty, and I said very

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little at that point. During the course of the hearing

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the Judge denied Mr. Crescenzi's motion to amend and reopen

17

the judgment, and told me that as a condition of that

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denial, that I would have to submit an affidavit of some

19

sort giving the defendant, Mrs. Tassop, an accounting in

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response to page 51 or page 52 of Mr. Crescenzi's memorandum.

21

That was the only condition that the Judge imposed

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upon me in that particular hearing in his denial for the

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motion to reopen the judgment.

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(Continued on next page.)

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TA:RMG 1

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Q Did the Judge, to your recollection, make any additional rulings on the case, or was that the sum and substance of the hearing?

A I believe that was the sum and substance of the hearing. The Judge asked me to proceed with preparing my papers in connection with the sale of the property. He had already granted my motion orally in an earlier hearing to sell the property.

Q And did you, in fact, submit the explanation of the accounts that Judge Judd had requested?

A Yes. I obtained the information from the Internal Revenue Service, and I submitted an affidavit with exhibits some time in July of 1976.

MR. MITCHEL: That completes the questions, Mr. Ferrel.

THE COURT: All right, now before you cross-examine, I think I had better ask this witness something so he will be alerted to it, and you will be, too. Let me point out to you that the docket sheet for June 25th, 1976, reads as follows:

"Case called for defendant's motion amending the judgment of the Court, etc. Motion argued. Decision reserved pending submission of response by Government and filing of Government's motion for foreclosure and

and sale on July 30th, 1976."

Now, I understand that you stated that Judge Judd denied the motion to open and amend the judgment. I realize that you also mentioned that one of the matters before the Court was the Crescenzi's motion regarding the Treaty of Guadalupe Hildalgo, such as was argued here today.

The words of "motion argued, decision reserved," doesn't state to which of the etc. it is directed to.

You see, the case is called according to the docket for defendant motion amending the judgment of the Court, etc.

Now, would that have been a defendant's motion to amend the judgment?

THE WITNESS: I don't recall seeing a defendant's motion, your Honor. But I know that Judge Judd had given them an opportunity on May 27th to come in on June 25th and show that the judgment should be less, if they had the documentation.

THE COURT: Well, I know on May 27th there is an entry that an order correcting the judgment was filed, and it states specifically, "should be amended and corrected to read the amount really is \$297,093.50,

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2 with interest at six percent.

3 THE WITNESS: That's right. That was the
4 Government's motion.

5 THE COURT: What I see, at least it would
6 appear to be, since the original judgment is for
7 something less.

8 You say there was still pending then a later
9 motion to amend it again.

10 THE WITNESS: There was a motion, a very
11 thick document papers, I believe that Mr. crescenzi
12 filed to open the judgment.

13 THE COURT: To open it?

14 THE WITNESS: And that's what was argued on
15 June 25th.

16 MR. CRESCENZI: And that was my understanding
17 that that was still open to this date. The motions,
18 as a matter of fact, I verified this with Mr. Johnson
19 the other day, that we had three motions on then,
20 and my recollection was that the decision was
21 reserved.

22 THE WITNESS: I'm testifying, your Honor.
23 I specifically recall Judge Judd denying their motion
24 to reopen, and requiring I file a response to page 51
25 of the memorandum of law which covered. If there

1
2 were three motions, all three of them. I can only
3 recall two.

4 THE COURT: Well, it does say "Pending sub-
5 mission of response, motion argued. Decision
6 reserved pending submission of response by Government
7 and filing of Government's motion for foreclosure
8 and sale on June 30th, 1976."

9 Now, to what would your response have been
10 directly? Assuming this is accurate? It's all that
11 the Court has to go by, you understand?

12 THE WITNESS: My response was directed to
13 page 51 or 52 of Mr. Crescenzi's memorandum of law,
14 which, in which he set forth an accounting of some
15 sort with respect to the outstanding liability,
16 and in response I did file an affidavit in July of
17 19 --

18 THE COURT: Is that an affidavit of someone
19 by the name of Graham or Grannum?

20 THE WITNESS: No. That is my affidavit. I
21 think there is a Mr. Graham who represents one of
22 the banks.

23 THE COURT: It says affidavit of J. Graham
24 filed on July 27th.

25 THE WITNESS: I believe my affidavit was filed

1
2 in the middle of the month some time.

3 THE COURT: Then the further entry, notices
4 of motion returnable July 30th, 1976 with affidavit
5 for judgment for foreclosure filed, would that have
6 been the Government motion?

7 THE WITNESS: We also filed a motion for
8 judgment of foreclosure, but I don't believe that the
9 affidavit was supposed to be filed with the motion
10 for judgment for foreclosure.

11 THE COURT: Now, you say you made a response
12 to page 51 and 52.

13 THE WITNESS: Yes.

14 THE COURT: It should have been your affidavit?

15 THE WITNESS: It should have been my affidavit,
16 and I specifically state in the affidavit that it
17 was made in response to Judge Judd's request on
18 June 25th, and I think I referred to the fact that
19 I was responding to page 51 and page 52. It may be
20 a five or a six page affidavit in which I set forth
21 our response to their claims for credits against the
22 tax liability.

23 MR. MITCHEL: May I, your Honor?

24 THE COURT: Yes, of course.

25 MR. MITCHEL: Just to help the Court, prior

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2 to the commencement of this hearing, I looked at the
3 Court files, and my recollection, although I admitted-
4 ly wasn't looking with this in mind, is that the
5 papers are in fact in there. Mr. Ferrel's affidavit.

6 THE COURT: Well, how are you going to dispute
7 that? This just came to my attention, the docket
8 sheets. I haven't attempted to go back -- since this
9 only came to me late this afternoon I requested a
10 copy of the docket sheets so I could see what the
11 entries were of what transpired.

12 MR. MITCHEL: There were a number of documents
13 filed apparently simultaneously in late July by the
14 Government, including not only what we are discussing
15 what's relevant here today, but also the substitution
16 of a party, one of the parties, Mr. Liebowitz
17 passed away.

18 THE COURT: Yes. There's an entry on here.
19 I see that.

20 MR. MITCHEL: And the U.S. Attorney's Office,
21 I thought, brought them all down at the same time.

22 THE COURT: That's on here.

23 MR. MITCHEL: The Liebowitz papers were
24 filed in -- excuse me, August, the motion for
25 judgment was filed in late July. We had to get a

1 death certificate or a copy of the papers appointing
2 Miss Olongo as executrix.
3

4 THE COURT: All right. Well, Mr. Taft.

5 CROSS-EXAMINATION

6 BY MR. TAFT:

7 Q Mr. Ferrel, Mr. Newman testified that at some
8 point within the thirty day period of February 6th, 1976,
9 after February 1976, he and you agreed to extend the time
10 for either side to present to the Court what they believed
11 to be the proper amount of tax due and owing; is that true?

12 A I granted Mr. Newman a two-week extension
13 to some time at the end of March to file his papers.

14 Q Was there a second extension?

15 A Not to my recollection.

16 Q So you don't recall the second extension?

17 A No. I don't recall anything about it.

18 Q Do you recall Mr. Newman withdrawing from the
19 case?

20 A Yes, I do.

21 Q Do you recall when that was?

22 A I believe -- I know Mr. Newman was here on
23 May 7th at the second contempt proceeding, and that he had
24 filed his papers, but I don't know whether it was at that
25 time or shortly before that that his request was granted

1 or whether I was even present when his request was granted.

2 Q Were there any discussions between you and
3 Mr. Newman, between the two week lapsing of the two week
4 period, after that first thirty day period and the time
5 he withdrew?
6

7 A There very well could have been.

8 Q Do you recall any?

9 A No, I don't.

10 Q Do you recall whether or not he asked you for
11 an additional extension?

12 A No, I don't believe he did.

13 Q I see. When Mr. Crescenzi came on the
14 scene, did he ask you for time to make a submission of
15 the defendant's side of this issue?

16 A I believe he did.

17 Q And what was your answer to him?

18 A I'd advised him that I sympathized with his
19 situation, and that I had been involved with this case,
20 and approximately five other attorneys who had all been
21 telling me the same story, and that they were new to the
22 case, and they couldn't get their hands on the records,
23 because the other attorneys wouldn't give it to them, and
24 I said, "I'm sorry. I do sympathize with your position,
25 but this matter has gone on long enough, and I cannot give

1
2 you an extension of time."

3 Q So Mr. Crescenzi made a motion to the Court
4 to reopen. That was one of the motions returnable on
5 June 25th?

6 A That was, I believe that was the motion that
7 was on June 25th. He had mentioned it in the earlier
8 proceeding on May 25th.

9 Q That was the motion returnable?

10 A That was one of the motions, I gather. I
11 recall that one specifically.

12 Q Do you recall yourself arguing against that
13 one?

14 A Very briefly. I didn't have too much to say.
15 Mr. Crescenzi was very vociferous and he was arguing before
16 Judge Judd, and during the course of the argument, Judge Judd
17 asked a number of questions and I only made a few comments
18 at the end of the proceeding.

19 Q I see. And do you recall Judge Judd reserving
20 decision on that motion?

21 A No sir, I don't.

22 Q Tell me something, you stated back in February
23 1976 for the record that certain Government liens were
24 invalid; did you not?

25 A That's correct.

1
2 Q Are those liens -- were the liens for the
3 period, December 31st, 1969; is that one of them?

4 A The ones based on the prompt assessment in
5 May, I believe, and August of 1972. It could have been
6 the fourth quarter, it could have been one of the quarters.
7 I'd have to go back and look at one of my papers.

8 Q I show you form number 668B. Would that
9 refresh your recollection?

10 (Handing to witness.)

11 A Based on the date of the assessment there,
12 May 16, 1972, one of the quarters was the fourth quarter
13 of 1969.

14 Q And that would also include three-quarters
15 of 1970, three-quarters of 1971 and three-quarters of
16 1972 based upon this as well?

17 A Well, you have the document before you. I
18 gather those were the quarters, yes.

19 Q Okay. Why were the liens invalid?

20 A Pardon?

21 Q Why were the liens invalid?

22 A The liens were not invalid. As a part of
23 the settlement, Mr. Newman informed me that it was a matter
24 of preference to Miss Tassop that she felt the Government
25 had not followed correct procedures in connection with

1 making the assessment against her, and that this was a
2 matter of principle with respect to the validity of these
3 liens. I was prepared to litigate the proper procedures
4 for the IRS in return for proceeding with the assessment of
5 the validity of the liens. I was going to obtain what I
6 wanted, a \$290,000 judgment for unpaid liability tax.
7 As part of the settlement, you will notice in the record
8 Miss Tassop acknowledged she had not transferred any
9 property since May or June of 1972.
10

11 Q You mean to obtain what you wanted you put
12 a statement on the record that was patently untrue, and
13 you knew it was untrue?

14 A For the purposes of settling the case and
15 obtaining a judgment for the full amount of the tax
16 liability, which was due, I agreed to make a statement
17 with respect to only the liens for which the assessment
18 had been made.

19 Q And that statement was untrue even though
20 you -- I want to know if it's true or untrue.

21 MR. MITCHEL: I think he is arguing with
22 the witness, and for that reason I object to the
23 question.

24 THE COURT: Well, isn't it a matter of
25 conclusion and not fact that we are talking about

1
2 here? It was his opinion as the lawyer that the
3 liens were valid, and he was expecting to demonstrate
4 that by proof.

5 It's possible, of course, that the proof
6 might not have satisfied the Court, and the Court
7 might have held against him. In other words, it
8 was -- it couldn't be said to be an ironclad promise.
9 He had a strong belief in it, but he was willing to
10 dislodge himself in that position and concede that
11 term for settlement. That is a common thing lawyers
12 do every day. You all know that.

13 (Continued on next page.)
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PA #10 1

Ferrel-cross/Taft

2 Q Mr. Ferrel, subsequent to February 6, 1976,
3 did there come a time when you actually submitted a
4 proposed order to Judge Judd?

5 A Yes.

6 Q When was that?

7 A A proposed order in connection with moving
8 the judgment?

9 Q Um-hmm.

10 A I don't think I actually gave the Judge the
11 order until -- I'd have to look at the record. I think it
12 was probably the -- the exact order was not given to the
13 Judge until May, but he had granted my motion in a
14 previous hearing during April, and then I gave him the
15 order in May of 1976 and he signed it at that time, and it
16 was filed.

17 Q I see. And in June of 1976 Mr. Crescenzi
18 made his motion to reopen that order. Was there any other
19 order signed by Judge Judd denying that motion?

20 A Denying Mr. Crescenzi's motion?

21 Q Yes.

22 A No.

23 Q Did you submit a proposed order as you had
24 submitted a proposed prior promised order?

25 A No.

Ferrel-cross/Taft

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Q Did anyone to your knowledge?

3

A No.

4

MR. TAFT: I have no further questions.

5

THE COURT: Do you have anything further,

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Mr. Mitchel?

7

MR. MITCHEL: No, your Honor, I don't.

8

THE COURT: I take you're excused.

9

THE WITNESS: Thank you very much.

10

THE COURT: Now, are there any further

11

witnesses to be called by anybody?

12

MR. MITCHEL: If I may, your Honor. This

13

taking the testimony which has been going on for

14

the past hour and 15 minutes originally came up

15

because of my suggestion of having Mr. Ferrel

16

testify concerning the events of the last hearing

17

that Judge Judd held.

18

THE COURT: You mean where the notes were

19

unavailable?

20

MR. MITCHEL: Yes. So, as far as we are

21

concerned, we don't have the burden on this matter.

22

THE COURT: No. I understand that.

23

MR. MITCHEL: We are prepared to, I suppose,

24

to testify to other matters, but I really think

25

at this point the burden is upon Miss Tassop to go

3 1 forward and present whatever evidence she has to
2 challenge the validity, the essential validity of
3 the consent judgment.

4 THE COURT: Well, I think so, too, as I said
5 earlier, that the burden is on a person who wishes
6 to set aside a judgment to show that there was some
7 invalidity in it which would warrant that.

8 MR. MITCHEL: Let me, if I may, make another
9 observation. The record in the case demonstrates
10 that in late June prior to the final hearing, the
11 final hearing with Judge Judd, counsel, particularly
12 Mr. Crescenzi, filed a lengthy memorandum of law.
13 This is my copy, and I imagine the original is
14 with the Court. It's approximately 60-odd pages.
15 Pages 51, 52 and 53 contain Mr. Crescenzi's
16 accounting or, I presume, it's Mr. Crescenzi's
17 accounting. This is the document that as we
18 interpret the matter Judge Judd directed
19 Mr. Ferrel to file a response to. This document
20 is nothing other than a statement and a brief.

21 Now, there are a lot of statements and
22 briefs in this case. I made a few myself.

23 Nonetheless, it carries no evidentiary
24 weight. The fact that Judge Judd was willing to
25 give it at least enough weight to direct

4 1 Mr. Ferrel to respond to it was simply a confession
2 on the Court's part, if I may so characterize it.

3 The document, itself, is not verified, not
4 authenticated, and in view of the response filed
5 by Mr. Ferrel I cannot envision anyone taking the
6 stand to testify to its validity.

7 Mr. Ferrel's affidavit recites that there
8 are payments on here that are shown as credits and
9 credits in litigation. There was, in fact,
10 applications to pay in full credits that were never
11 contested by the Government. That is so because on
12 occasion Miss Tassop paid off the liability, and the
13 quarter was never seen again, and it's not in this
14 lawsuit, yet, the credit will still show up on this
15 schedule as a credit in a quarter in litigation
16 rather than a credit on a closed quarter.

17 For that reason, this statement of counsel
18 is not evidence to upset the judgment, and the
19 only -- and I add parenthetically, that in the
20 same transcript of February 6 that we have been
21 over several times, one of the earlier portions,
22 approximately page 4, 5 and 6, Mr. Newman on the
23 record says there are only like four items, and they
24 total only \$12,000. Two of the items are less than
25 \$200, and they're really not in dispute.

5 1 It would be, would appear as far as
2 Mr. Newman is concerned, in 1976 those were the
3 only four items that were in dispute on this entire
4 amount of \$290,000 when Mr. Crescenzi got in the
5 case and attempted to challenge the judgement.
6 Based on the concession that Mr. Ferrel has made,
7 we have had adequate testimony to the fact, simply
8 what I called earlier quid pro quo.

9 Mr. Ferrel waived some of the liens to get
10 the consent judgment. But, the taxes are still
11 there, and we are still trying to enforce the
12 judgment on the taxes.

13 I suppose what I'm coming to, your Honor,
14 is just this: The statement of counsel is not
15 evidence, and this hearing was convened today with
16 the thought in mind that the defendant was going to
17 present evidence, and failing such evidence, I
18 think the motion under Rule 60 must be denied, and
19 the order of sale which was lodged earlier in the
20 Court should be entered so that we may proceed.
21 Thank you.

22 MR. TAFT: Your Honor, the hour is late and
23 I appreciate the proceeding that went on today,
24 even though it was slightly irregular. As to the
25 June 25th hearing it was very helpful, because it

6 1 showed that that motion is clearly open, and we
2 would like the opportunity -- I'm sure it will have
3 to be on another day -- to present evidence and take
4 testimony, because we do have the burden and we are
5 prepared to come forward and prove our point, and all
6 we ask the Court is for the opportunity at this
7 time.

8 THE COURT: Well, I would like to suggest that
9 you do this as a preliminary. You submit a brief to
10 me with what you say your proposed offer of proof
11 would be, and the legal arguments which would
12 support your view just expressed.

13 If you persuade me that there are issues
14 of fact on this, I probably will grant you the
15 opportunity to produce that evidence.

16 But, I mean I would like to see what you say
17 you really believe you can prove, and I would
18 believe it would have to be quite convincing,
19 because there's no question in my mind that a feeling
20 has been going on here for a long period of time,
21 and I think it would -- I would have to be persuaded,
22 I say, to do anything now to upset what I believed
23 from what I've led appeared to have been a
24 reasonable conclusion to it all.

25 I don't know how much time you want to put

7 1 that together, but --

2 MR. TAFT: I will be out of town most of
3 next week, your Honor. If we can put it over to a
4 little more, two weeks would be sufficient. The
5 following week.

6 MR. MITCHEL: Your Honor, we object.
7 Mr. Crescenzi is co-counsel, and your Honor, if
8 the matter would go over, it's over two weeks.
9 We would request a contempt hearing be set on in
10 two weeks. I apologize for imposing on the Court,
11 because that's no doubt what I'm about to do, but
12 we are concerned with the sequence of time in this
13 case, your Honor. If the Court would consider
14 entering an order of sale, providing the property
15 be sold in mid-June.

16 THE COURT: How much notice is required?

17 MR. MITCHEL: Four weeks advertising. Now,
18 this is, in fact, the proceeding that Judge Judd
19 was going for, and I wouldn't object.

20 THE COURT: Well, we are approaching, I
21 realize, the end of the school year, and your desire
22 is to -- in order to go ahead with this, to have
23 it done so that you won't get back into the ordinary
24 grind of another year where the tuition was paid,
25 et cetera.

3 1

Now, this is almost May 1st.

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MR. TAFT: There would still be ample time, your Honor, and certainly two weeks is not long when you are thinking about putting 300 children out in the street. Mr. Crescenzi is most capable --

THE COURT: Let's see, two weeks would bring it to May 6th. Is that what you are talking about?

MR. TAFT: Yes, your Honor.

(continued next page)

1 THE COURT: And I assume you would want
2 probably some time to respond? I hate to do it to
3 you, but I'm sure I want to hear what you have to
4 say as to whether --

5 MR. MITCHEL: Your Honor, if I may, maybe
6 as charitable as this. Let me say, if these
7 gentlemen are prepared to file simply a recital
8 of everything that has been filed already, the 50-odd
9 page memorandum that was prepared by Mr. Crescenzi,
10 and the brief and memorandum filed by Mr. Taft,
11 no, I do not wish to respond.

12 THE COURT: I can read what's in the file,
13 obviously. I'm expecting a very cogent and
14 convincing demonstration that there are, indeed,
15 matters here which would require a hearing.

16 MR. MITCHEL: May I make as if it was a
17 stipulation on the record, there are issues of
18 fact. There were issues of fact such as they
19 were that existed at the time of the consent
20 judgment. There was an issue as to whether or not
21 a particular Revenue officer served particular
22 demand documents on Miss Tassop on particular
23 days in 1972. If they served the documents or a
24 subject to other premises that are in my memorandum,
25 then we had an enforceable lien, and if they didn't

1 serve the documents, we didn't have a lien.

2 I'm convinced that that is an issue of fact
3 that this Court can take up at this late date.

4 The other, your Honor, there is an issue of
5 fact, when, if ever, Helen Tassop filed tax returns.

6 THE COURT: What I'm talking about, as we all
7 know, issues of fact which would be material to
8 something; that is to say, I would require not only
9 the showing that there is, indeed, an issue of
10 fact, but it would ultimately change the result.
11 That's the basic requirement of attempting to
12 overturn a judgment, and that the result would be
13 any different.

14 MR. KIKEL: Your Honor, my name is Armin
15 Kikel, attorney for the second mortgagee, the state.
16 I believe it can be safely assumed and agreed to by
17 the defense that a second mortgage is in default at
18 this time; certainly in arrears, and we have
19 endeavored to give time to the parties to try and
20 settle their differences and to try and cooperate
21 with the Court in determining the facts at issue.

22 We have, however, heard nothing as to what
23 assets defense may have insofar as paying off any
24 judgment that might finally be rendered by the
25 Court.

1 We have a very substantial mortgage on the
2 real property which is getting further and further
3 in debt.

4 THE COURT: You mean your claim?

5 MR. KIKEL: And we would like permission to,
6 from your Honor, to file a permission for
7 foreclosure and sale of the property on behalf of
8 the second mortgagee, who has a prior lien. I
9 believe it may almost, inasmuch as we haven't heard
10 of any money settlement at all, any actual funds
11 being available by the defense to pay any part of
12 any judgment that might be rendered, I don't
13 believe that justice can be served to that great
14 extent by holding off a sale of the property
15 without the defense coming forward and showing their
16 ability to satisfy any judgment that might be
17 rendered by the Court.

18 MR. MITCHEL: Your Honor, the order before
19 the Court, that we lodged last summer, adequately
20 protects the interest of Mr. Kikel's client,
21 because it recognizes the priority of that mortgage.
22 There's also another mortgage prior to his client's
23 mortgage that we understand is also in default, but
24 in a smaller amount.

25 It is my thought if the decedent's estate

1 that Mr. Kikel represents files petitions in the
2 State Supreme Court seeking foreclosure, as a matter
3 of jurisdiction, the State Court cannot acquire
4 jurisdiction of the real property which is already
5 before this court.

6 Accordingly, he will name the United States
7 as defendant. The United States within 30 days
8 will remove the proceeding to Federal District
9 Court, and file a motion to have it consolidated
10 with the instant action.

11 All this will cause additional delays.
12 It would be my hope that Mr. Kikel and his client
13 would join in the motion for an order of sale in
14 this proceeding, and free and clear -- it's an
15 order granted as free and clear of all liens of
16 all parties hereto as to the estate, as a party
17 here to the sale as a property, common order and
18 distribute the proceeds in accordance with law.

19 So, what I am saying, I think Mr. Kikel
20 should simply, rather than filing another proceeding,
21 simply move in this court.

22 MR. KIKEL: I'd be happy to do so, your
23 Honor.

24 THE COURT: Well, I feel that I have to
25 give Mr. Taft an opportunity to demonstrate, to make

1 a demonstration. Do you believe that May 6th,
2 which is the two weeks he asks, will upset what you
3 have in mind? It doesn't seem to me, if I get it,
4 make up my mind promptly, as I say, I don't think
5 showing that there's some issue of fact is going to
6 help his cause any. I have got to be shown
7 something that really would affect the validity of
8 his judgment, because quite obviously, it will be
9 attacked on appeal in an effort to keep the ball
10 in the air, too. You must remember that.

11 MR. MITCHEL: I believe the taxpayer would
12 have to bond the appeal in order to bond the appeal
13 you have to --

14 THE COURT: While they can appeal from the
15 judgment proper, they can appeal from my abuse of
16 discretion in failing to open it up.

17 MR. MITCHEL: Well.

18 MR. TAFT: Which is not bondable.

19 THE COURT: I don't know.

20 MR. MITCHEL: By the same token, I don't
21 believe that the appeal would stay the process as
22 the real sale.

23 Again, when we say affect the result, there
24 are issues of fact that will, do attack the amount
25 of the judgment. I'll admit that.

1 THE COURT All right, but the answer to
2 that might be that can be adjusted on any, as you
3 say, deficiency or otherwise. That's a matter of
4 just offsetting credits.

5 MR. MITCHEL: Exactly, your Honor.

6 THE COURT: Because what I suppose, whether
7 there are offsetting credits that may result in
8 litigation in that point as to whether there should
9 be damages --

10 MR. MITCHEL: That was Mr. Newman's theory.

11 THE COURT: Arising from the California
12 property. But, that's really separate litigation
13 than what we are talking about here.

14 MR. MITCHEL: If the Court determines,
15 based upon Mr. Taft's papers, that a further hearing
16 is not warranted, will the Court without further
17 proceedings enter our order of sale and premit the
18 matter to go forward? What I'm saying --

19 THE COURT: I'm certainly mindful of the
20 protracted time that has taken, and that at some
21 point someone has got to bite the bullet. Though,
22 I would expect to act promptly, I thought that you
23 might want some time to respond to anything he
24 raises.

25 MR. MITCHEL: Well, could we leave it to this

1 basis, that as soon as I receive the papers I will
2 contact the Court?

3 THE COURT: And let me know what you think?

4 MR. MITCHEL: Just respond by that, in the
5 informal sense. I would probably call Mr. Johnson
6 or your clerk and advise him of my reaction, advise
7 Mr. Taft by telephone, confirm the whole thing by
8 letter, if I do deem --

9 THE COURT: But I would expect if what is in
10 your argument, what is offered is not new, you
11 might at least point out to me that if prior
12 documents or other information in the files that
13 would demonstrate why you say nothing to do --

14 MR. MITCHEL: And I would also hope that
15 Mr. Taft would make his preparation, not with the
16 many other papers that have been filed.

17 THE COURT: I don't expect Mr. Taft to do
18 so. That's why I stressed the word "cogent and
19 convincing demonstration," by way of brief and
20 would prompt the Court to let's say, in the interest
21 of justice, to do something about the existing lien.
22 I'm not saying I will. I have to be shown. That's
23 my feeling right now at the moment, because I
24 believe they have the burden. This judgment was
25 entered. Certainly it would appear so far after

1 consultation with counsel, and before the Court itself,
2 I know Judge Judd can't speak for himself now, but
3 he was certainly a man who would lean over backwards
4 to see that no one entered into a judgment without
5 full knowledge of what was involved.

6 That's almost as you say like taking a guilty
7 plea.

8 So, I'm aware of all those factors, but I
9 do feel that since Mr. Taft is new to the case,
10 has obviously been brought in to see whether
11 anything can be done, I hate to say you shan't have
12 the chance.

13 MR. TAFT: Thank you, your Honor.

14 THE COURT: So suppose we say May the 6th is
15 your deadline date for that, and you will then
16 decide whether or not --

17 MR. MITCHEL: As soon as I have it in my
18 hands, I can make an appraisal.

19 THE COURT: (Continuing) -- whether or not
20 there is any further response to that. But, I
21 expect you to at least indicate what there is
22 already in the file. Just calling attention to
23 prior papers or what have you, so that I can
24 satisfy myself on that score. Something that
25 won't be overlooked.

1 All right. I guess that's all for tonight.

2 MR. TAFT: Thank you for your patience.

3 (Whereupon these proceedings were concluded.)

4
5 * * *

375a

MEMORANDUM AND ORDER OF NEAHER, J.
DATED JUNE 3, 1977 (pp. 375a-381a)
(Filed June 6, 1977)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUN 6 1977 ★

TIME A.M.
P.M.

UNITED STATES OF AMERICA,

Plaintiff,

75 C 1481

-against-

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND;
TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCI-
ATION; ESTELLE LEIBOWITZ LUNGO,
Executrix of Estate of HOWARD
LEIBOWITZ,

MEMORANDUM
AND
ORDER

Defendants.

APPEARANCES:

DAVID G. TRAGER, ESQ.
United States Attorney,
Eastern District of New York
Attorney for Plaintiff
By PROSPER K. PARKERTON, ESQ.
Assistant U. S. Attorney
and

MYRON C. BAUM, ESQ.
Acting Assistant U.S. Attorney
General, Tax Division, United
States Department of Justice
By RICHARD MITCHELL, ESQ.
Trial Attorney

GENE CRESCENZI, ESQ.
and

HATFIELD, BRADY & TAFT
Attorneys for Defendants Helen
K. Tassop and Tassop Realty, Inc.
By ROBERT S. TAFT, ESQ.

NEAHER, District Judge.

Due to a host of mishaps, this reassigned action, which appeared on the verge of a reasonable conclusion a year ago, has hung on to bedevil the court and the parties. Fortunately, the haze has now cleared sufficiently for the court to see that the original solution remains appropriate.

The United States brought this action on September 9, 1975 to foreclose tax liens and to recover the amount of federal income tax and Social Security tax which defendant Helen K. Tassop was legally obligated to withhold from the wages of her employees at The St. Andrew Academy on the Sound, a private school affiliated with the Greek Orthodox Church. After an evidentiary hearing, the late District Judge Orrin Judd entered a preliminary injunction on September 19, 1975 directing Tassop to make regular deposits of withholding taxes as required by law.

At a conference before Judge Judd on February 6, 1976, Tassop consented to judgment against herself in return for the Government's concession that several liens were invalid. At Judge Judd's suggestion, the judgment was in the amount of \$275,000, subject to modification as to the amount

on application by either side.

Two months later the Government, having determined that Tassop owed \$297,093.50 as of February 6, 1976, moved to increase the amount of the judgment to that figure. The motion was granted on May 7, 1976. On the same day Tassop's then attorney sought and was granted leave to withdraw from the case.

On May 27, 1976 a hearing was held on two additional motions, one by the Government for an order directing a sale of the school to satisfy the judgment and the other by Tassop to reduce the amount of the judgment. The latter motion was adjourned to June 25, 1976, while the former motion was granted. Judge Judd stated:

"I'll grant the motion directing the sale. I will provide that the advertising not begin until after June 25, that will give you a chance to have four weeks advertising and have the sale the last week in July when I am back from vacation, and if you come in on June 25 with something substantial I could postpone the advertising."

Presumably, "something substantial" meant an indication that Tassop would come up with a realistic plan to pay the judgment and obviate the need for the sale of the school.

On June 22, 1976 Tassop's new attorney filed a lengthy memorandum of law in which Tassop requested the court (1) to vacate the judgment on the ground of misrepresentations by the Government's attorney and Tassop's former attorney at the time of the consent judgment, (2) to declare several of the Government's actions illegal, and (3) to reduce the amount of taxes owed by Tassop to about \$13,000 according to a "statement of account" contained in the memorandum. This motion was argued on June 25, 1976. According to the Government's attorney, Judge Judd denied the motion to amend and reopen the judgment provided the Government's attorney filed a response to Tassop's "statement of account". Unfortunately, Judge Judd died soon after the hearing, and the transcript of the hearing is lost. The docket entry for that date states: "Motion argued Decision reserved pending submission of response by Govt and filing of Govt's motion for foreclosure and sale on 7-30-76." Judge Judd's notes from the hearing contain the following inscriptions: "Motion to reopen denied . . . Ct gives 35 days to respond on figures."

While not entirely clear, these constructions of what transpired lead to the conclusion that only the amount of the judgment remained unsettled, and that would be resolved

after the Government responded to the "statement of account". In addition, it appears that the Government's proposed order for foreclosure and sale would be signed when it was submitted.

After Judge Judd's death the case was reassigned to the writer. The Government filed its response to the "statement of account" and requested entry of an order directing the foreclosure and sale. At this point Tassop's attorney fell seriously ill, and the matter was postponed for several months. In December 1976 the Government and Tassop met to work out an arrangement whereby the school could be continued under Tassop's direction. Negotiations broke down, however, when Tassop failed to provide necessary financial information concerning her ability to pay the taxes and continue to operate the school. A further conference in March 1977 before this court also proved unavailing. On April 22, 1977 the court conducted a hearing to penetrate the confusion surrounding this case.

After all this, Tassop's position is simply that the judgment should be reduced by four separate credits. The Government rejects each of them.

Tassop's first two points are that she was charged twice for taxes in the second and fourth quarters of 1966. In each instance, however, the record discloses no duplication, and Tassop's evidence shows only a single payment.

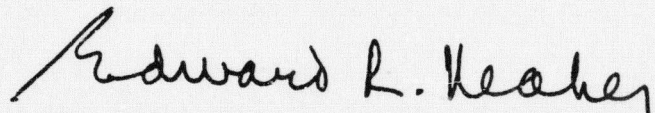
Tassop also argues that seizures by the Government of two California properties were illegal because they were executed pursuant to liens which the Government conceded were invalid in return for the consent judgment. These liens encompassed various tax periods from 1969-72. Since the seizures, however, were undertaken in part with respect to an uncontested assessment for the first quarter of 1973, they would appear to be valid. In any event, Tassop may raise any claims with respect to the California property in a separate proceeding in California.

Finally, Tassop contends that an assessment in 1974 for two quarters in 1969 is time-barred because she filed her tax returns for those quarters. The Government, while alleging that she did not file the returns, argues that even if she did file them she waived her right to contest the assessment at the time of the consent judgment. At that time her attorney recited four points in dispute and described them as

"the only four items which could in any way change the balance of the judgment." Although the two quarters in 1969 were not among those four items, the ultimate agreement to which Tassop consented did not contain any limitations as to the matters she could raise in an effort to reduce the amount of the judgment.

Therefore, a hearing will be held on June 23, 1977 at 4:00 p.m. to determine whether the 1974 assessment for the two quarters in 1969 is time-barred. At that time the court also will consider any firm plan presented by Tassop for satisfying the judgment and averting the sale of the school.

SO ORDERED.



U. S. D. J.

Dated: June 3, 1977
Brooklyn, New York

TRANSCRIPT OF HEARING BEFORE HONORABLE EDWARD R. NEAHER ON
JUNE 23, 1977
(Filed September 15, 1977)

382a

(pp. 382a-442a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 15 1977 ★

TIME A.M. _____
P.M. _____

UNITED STATES OF AMERICA :

: 75 C 1481

-against-

TASSOP, et al,

Defendants.

United States Courthouse
Brooklyn, New York

June 23, 1977
4:00 o'clock P.M.

B E F O R E :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcript from my
stenographic notes in this proceeding.

Michael Picozzi
Official Court Reporter
U. S. District Court

MICHAEL PICOZZI
ACTING OFFICIAL COURT REPORTER

383a

A P P E A R A N C E S :

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

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2 THE COURT: Let the record show that this
3 hearing is being held in accordance with the Court's
4 order issued on June 3rd, 1977 in order to determine
5 whether the 1974 assessment for the two quarters of
6 1969 is time barred.

7 Now, you have a witness?

8 MR. MITCHELL: That is correct, your Honor,
9 the Government calls as its first witness Rita Murray.
10 R I T A M U R R A Y, a witness called on behalf of the
11 United States of America, was sworn by the Clerk
12 of the Court and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MITCHELL:

15 Q Miss Murray, by whom are you employed?

16 A Internal Revenue Service at Brookhaven
17 Service Center.

18 Q What is your job title?

19 A Accounting technician.

20 Q Within what section or division of the
21 service center do you work?

22 A Data Conversion and Accounting Division,
23 Accounting Branch.

24 Q What is the function of that branch?

25 A We receive requests from different people

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Murray-direct

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2 relating to the Internal Revenue Service for information
3 regarding taxpayers' accounts.

4 We have access to the records of the Internal
5 Revenue Service. We research the records upon request and
6 we secure the information and prepare transcripts of the
7 information for court use, if necessary, and we appear in
8 court to testify.

9 Q What records of Internal Revenue do you have
10 access to?

11 A We have access to the records of District 11,
12 13, and 22 consisting of all of Long Island, New York,
13 parts of Westchester and all of New Jersey. And also
14 Martinburg transcript which covers the whole country.

15 Q Would your records include records of a --
16 if a taxpayer resided in Queens County in 1969 and filed
17 returns accordingly, would your records include such returns?

18 A Yes sir, they would.

19 Q I hand you a two-page document.

20 I previously provided a carbon copy to Counsel
21 for the Defendant and I ask you to identify the document?

22 A It is a certificate of assessment and payment
23 for H. J. Tassop doing business as St. Andrews Academy for
24 the Form 941 for the quarter March, '69 and June, '69.

25 MR. MITCHELL: We would ask this be marked as

Government's Exhibit 1.

MR. TAFT: May I see it?

THE COURT: Surely.

(Pause.)

MR. TAFT: Before this is admitted, could we have a foundation as to who prepared this and --

MR. MITCHELL: We are prepared to go into that.

THE COURT: He is going to inquire.

MR. TAFT: Thank you, your Honor.

THE CLERK: Two page document dated June 22nd, 1977, marked for identification as Plaintiff's Exhibit 1.

(So marked for identification.)

DIRECT EXAMINATION

BY MR. MITCHELL: (Continuing)

Q Where was that transcript prepared?

A It was prepared in Brookhaven Service Center in the Certification Unit, Accounting Branch.

Q Would you describe how it was prepared?

A I received a telephone request for the information. I assigned the case to one of the accounting technicians working in my unit. She caused a search to be made of the microfilm records available to the Service Center. When they received the information back from the

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2 microfilm records, she prepared this form and it was
3 quality reviewed by myself and the senior technician in the
4 group and signed by the supervisor, certified by the
5 supervisor of the unit.

6 Q Did you verify it in comparison with the
7 microfilm records?

8 A Yes sir.

9 Q As far as you can discern, is the record
10 correct?

11 A Yes sir.

12 Q Does that record indicate whether or not the
13 Defendant filed employment tax returns for the first and
14 second quarters of '69?

15 A Yes sir, it indicates the taxpayer did not
16 file for the first and second quarters of 1969.

17 Q What are the dates? Can you determine from
18 the records on what dates tax liabilities were assessed
19 against the Defendant?

20 A For the period March, 1969 there was a tax
21 assessment; an assessment on April 10, 1973; there was a
22 second assessment on 10/28/74, for June of '69; there was
23 a tax assessment for 10/73; and another assessment on
24 10/28/74.

25 MR. MITCHELL: Your Honor, that completes the

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2 questions we would have of Miss Murray. We offer
3 the transcript and the record not simply based on the
4 testimony but under the rules it is a certified
5 Government document.

6 THE COURT: All right. Mr. Taft, do you wish
7 to question?

8 MR. TAFT: Mr. Crescenzi does.

9 CROSS EXAMINATION

10 BY MR. CRESCENZI:

11 Q I call your attention to the document. Would
12 you show where it indicates it was not filed?

13 A It doesn't show by stating there was no
14 record of filing, it shows there was no record of filing
15 by the fact it doesn't say that a return was filed.

16 MR. CRESCENZI: Your Honor, I move to strike
17 the answer as not responsive to the question.

18 My question was, I believe, would you show
19 where it indicates that the returns were not filed?

20 A I am sorry, I can't answer that question.

21 Q Isn't it a fact that you are making a
22 conclusion when you said it wasn't filed?

23 A I made a conclusion based on the evidence that
24 we have on record.

25 MR. CRESCENZI: I move to strike the answer as

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2 unresponsive. A conclusion is a mental operation.
3 And for the further reason her explanation is that
4 of a mental operation.

5 THE COURT: I suppose any answer is a
6 result of a mental operation.

7 MR. CRESCENZI: But it is the explanation of
8 one, your Honor, and it is not responsive to the
9 question.

10 THE COURT: I believe it to be responsive.
11 Perhaps the explanation isn't satisfactory to you.
12 I take it that the answer is that the evidence is
13 negative. That is to say the absence of a record is
14 taken to mean the absence of a filing, is that
15 correct?

16 THE WITNESS: Yes sir.

17 Q Is it your statement that anything that is
18 not shown in the records has under no circumstances been
19 filed?

20 A In this case the fact that the transcript does
21 not indicate a record of filing, yes.

22 Q Why would Mr. Lapidus say it was filed and he
23 was told by someone else in your record center that it was
24 filed and he behaved responsively to that information?

25 MR. MITCHELL: Objection, your Honor.

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THE COURT: Is there a question pending?

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MR. CRESCENZI: Your Honor, that would be the question.

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Did you hear the colloquy in the Court earlier referring to Mr. Lapidus' testimony on his deposition with regard to the March, '69, 941 returns?

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THE WITNESS: I remember his name being mentioned. I don't remember whether or not there was a statement as to whether he said there was a return filed.

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THE COURT: You may take the transcript and read to her what was said.

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Q Is there some way you can differentiate between the tax being paid and the return being filed?

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A Yes sir.

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Q Would you tell us?

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A When a return is filed it is listed as a return filed and tax liability assessed and when a payment is made it is listed as a payment -- which are two different things.

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Q Do your records show that the 941 for the March quarter of 1969 has been paid or not?

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A Our records show that there was no filing for

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2 March quarter of 1969.

3 THE COURT: Do they show any payment for that
4 quarter?

5 THE WITNESS: Yes, there are certain payments
6 for the March quarter of 1969. Not full payments of
7 the tax assessment.

8 THE COURT: Partial payment?

9 THE WITNESS: Yes.

10 THE COURT: Is there any indication of the
11 dates when those were made?

12 THE WITNESS: Yes sir. There was a payment
13 for \$153.60 on 4/24/73.

14 There was a payment of \$276.60 on 5/6/75.

15 And a payment of \$5,000.00 on 5/2/75.

16 THE COURT: Adding those up, how far short
17 do they fall of full payment?

18 THE WITNESS: The balance due on the account
19 to date, as of the 22nd remained \$9,638.66.

20 THE COURT: All attributable to that quarter?

21 THE WITNESS: All attributed to that quarter.

22 Q May I read you the question and answer of
23 Mr. Lapidus?

24 THE COURT: You have my permission to read her
25 the question and the answer.

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2 Q "Question: So the fourth quarter of 1968, I
3 believe, the first, second, and fourth quarter of '70, there
4 was the first, second and there was the fourth quarter of
5 1971, the third quarter of 1971, I think was filed without
6 a tax due on it. If I can recall the third quarter was the
7 summer months.

8 THE COURT: Wait a minute.

9 MR. CRESCENZI: That is the answer of
10 Mr. Lapidus with respect to the fourth quarter.

11 THE COURT: So that the record is clear, you
12 are reading from a copy of a page of a deposition of
13 whom?

14 MR. CRESCENZI: Mr. Lapidus.

15 THE COURT: Do you know his full name?

16 MR. MITCHELL: David Lapidus, L-A-P-I-D-U-S.

17 THE COURT: What is his position?

18 MR. CRESCENZI: Agent, Internal Revenue
19 Officer.

20 MR. MITCHELL: Mr. Lapidus is a Revenue Officer
21 of the Internal Revenue Service and at one point in
22 time in charge of collection in certain accounts
23 involved in this litigation.

24 THE COURT: I see. I don't know whether you
25 remember what the statement in question and answer

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2 form was, I take it what Counsel wants to know is
3 would that information such as it is alter your
4 conclusion, if the Court may call it that, as to
5 whether or not a return was filed for the first
6 quarter of 1969, the 941?

7 THE WITNESS: No sir, I didn't specifically
8 hear him mention the first or second quarter of '69.
9 What he read would not change the fact that a
10 return has not been filed to date for the first and
11 second quarters of 1969.

12 Q You are saying that Mr. Lapidus' testimony
13 is not correct, is that what you are saying?

14 MR. MITCHELL: Objection, your Honor.

15 THE COURT: Let me put it this way, I will
16 sustain objection to form. His testimony may be
17 correct to the extent that it reports incorrect
18 information.

19 Do you understand? That isn't the real
20 question. The real question is not whether he
21 correctly recorded incorrect information, but rather
22 whether what he reported was in fact incorrect
23 information based upon the record keeping system of
24 the Government in this respect.

25 MR. CRESCENZI: My next question is when is the

Government --

THE COURT: It's obvious from the witness' last answer that her records disagree with that statement. Her records are not in agreement with Mr. Lapidus' statement. That doesn't mean that Mr. Lapidus did not correctly state what he believed to be the fact but the problem is obviously the governmental records have to be the final arbiter of the facts.

There are numerous statutes in the United States Code that indicate that a certification that a paper has not been filed or an entry has not been made is evidence that the paper was not filed or the entry was not made.

Q What procedures did you follow to arrive at the calculations on this certification assessment?

A I myself did not undertake any procedures to arrive at this calculation. What happened was we transcribed from a microfilm printout of the taxpayer's account what was on the microfilm, the history of her account, these two quarters, and we put it on a certificate of assessment and payments and searched for any unidentified payment which may have been made and not credited to her account.

And we prepared the transcript from the

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2 microfilm data. I myself did not figure any of these
3 payments or assessments.

4 Q When you say we prepared the transcript, that
5 means you typed it?

6 A No sir, it doesn't. It means that one of
7 the technicians in my unit caused a search to be made of
8 the microfilm records. The microfilm clerk returned to
9 us a transcript of the microfilm printout. The accounting
10 technician in my group prepared the certificate of
11 assessment and payments. The typist in the unit after it
12 was quality reviewed then typed it.

13 Then she gave it to me and I quality reviewed
14 it against the microfilm printout and ascertained that it
15 was correct before bringing it to court and the supervisor
16 signed it.

17 Q When you said quality reviewed it, you found
18 on the microfilm printout the entries exactly as they
19 appear here?

20 A Yes sir.

21 Q Do you know Mr. Lapidus?

22 A No sir, I don't.

23 Q Do you know Mr. Caton?

24 A No sir, I don't think I do.

25 Q Would you know if Mr. Caton would have access

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to the type machine covering the account in question?

A Not knowing what area he works in, I don't have any idea whether he has access to the machine.

Q If you knew of the testimony of Mr. Lapidus saying to the effect that Mr. Caton had access to the machine and did give him the information that the first, second, and fourth quarters were made, would that be a true answer?

A I can't testify as to what somebody else has told you or previously testified to.

Q You just told us -- you talked about we --

THE COURT: Mr. Crescenzi, I don't think that makes progress here.

MR. CRESCENZI: No further questions.

THE COURT: It's obvious when this young woman was speaking she was speaking of her associates in her department.

Practically all of whom she identified as various assistants who played a part in the eventual preparation of that certified copy.

She wasn't talking about people like Mr. Lapidus or the other person.

MR. CRESCENZI: I except to the ruling on the ground it places an extraordinary burden on the

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Defendant here.

THE COURT: It puts no burden greater on the Defendant than it does on every other citizen.

You must appreciate the fact the Government maintains records. No one says they are mistake proof, but the probabilities are, they are probably 99.8 or 9 percent right.

MR. CRESCENZI: I have no further questions of Miss Murray.

THE COURT: Now, is there anyone else? Do you have any redirect here?

MR. MITCHELL: We did offer the document into evidence. I don't know if there is an objection or ruling,

THE COURT: I am accepting it in evidence, certainly.

MR. MITCHELL: We have nothing further with Miss Murray.

MR. CRESCENZI: May I object on the grounds of hearsay and --

THE COURT: I accept it as a certified record of the United States Government.

THE CLERK: Plaintiff's Exhibit 1 received in evidence.

(So marked in evidence.)

THE COURT: Is there anyone else you propose to call?

MR. MITCHELL: My inclination is to rest. I do have other witnesses as possible rebuttal witnesses.

THE COURT: I don't believe that the Defendants have any witness available.

MR. TAFT: We have Miss Tassop.

H E L E N T A S S O P, a witness called herein was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. CRESCENZI:

Q I call your attention to the 941 returns of 1969 and ask you, for the first, second and fourth quarters, were those, to your knowledge, were those returns made?

A First, second '69, yes, on time.

Q And the fourth quarter?

A No, the fourth quarter falls in the category "invalid lien."

Q I show you Government's Exhibit 1 and I call your attention to the \$153.60, does that refresh your recollection?

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2 A Yes. I have a return. I don't know what
3 you call it, it is a bill I believe and it says on it
4 balance for the first quarter.

5 I have balance for the second quarter of
6 '69, \$153.60 which we paid.

7 THE COURT: Are those documents available?

8 THE WITNESS: Mr. Taft has them.

9 MR. TAFT: I don't have them. Can we submit
10 them if they are official Internal Revenue forms?
11 Can we supply the Court --

12 THE COURT: I am assuming whatever you have
13 would be copies of anything that may have been filed.

14 MR. TAFT: This is a bill to her. It would
15 be an original.

16 THE WITNESS: I will explain. We filed in
17 '69. In '73 they sent us a 352 form -- I am not
18 sure of the number.

19 THE COURT: When you filed in '69, do you have
20 a copy of that?

21 THE WITNESS: Yes.

22 THE COURT: Where is it?

23 MR. TAFT: Copies of the return were already
24 submitted to Mr. Mitchell some time ago.

25 THE COURT: You mean the only copies you had?

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2 MR. TAFT: No, xeroxes of the copies. They
3 are in the Court record, your Honor.

4 THE WITNESS: Perhaps the \$153 bill is there
5 also. We submitted that. It says balance on it.

6 (Pause.)

7 THE WITNESS: We found it, your Honor.

8 THE COURT: You found your copies?

9 THE WITNESS: Yes.

10 MR. CRESCENZI: Your Honor, I believe I have
11 the original from which we took the photostat here.
12 For the first two quarters in question.

13 THE COURT: What do you propose to do?

14 MR. CRESCENZI: I propose to show that the --
15 substantially all of the tax was -- payment of all
16 the tax was timely made in 1969 and there was only
17 a balance due at approximately April, 1973 when she
18 was responsive to it with a balance of \$153.00 --

19 THE COURT: What do you have there? Is that
20 what I see here (indicating)?

21 MR. CRESCENZI: No. That is the 941.

22 THE COURT: These are in the Court file?
23 I suggest you show it to the witness.

24 Are you familiar with it?

25 THE WITNESS: Yes.

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2 THE COURT: I don't think what you have in
3 your hand is of any help.

4 THE WITNESS: I recognize this.

5 THE COURT: Mr. Crescenzi, show the witness
6 the document I pointed out to you in the Court file
7 and ask her an appropriate question.

8 Q I show you this document in the file which
9 refers to the first quarter of 1969. Do you recognize
10 that document?

11 A Yes.

12 Q Would you tell the Court what it is?

13 A 941 for the first quarter of '69 and I signed
14 it.

15 Q What is the date on that?

16 A 7/7/69.

17 Q Is there another 941 for the second quarter?

18 A Yes, July, '69.

19 THE COURT: What is it --

20 THE WITNESS: July, '69, for the second
21 quarter.

22 THE COURT: What date?

23 THE WITNESS: July, '69.

24 THE COURT: Is the document dated when you
25 signed it somewhere?

1 THE WITNESS: Yes. Just July, '69.

2 THE COURT: You don't know when it was mailed
3 in?

4 THE WITNESS: Then.

5 THE COURT: Some time after July 31 --

6 THE WITNESS: 1969.

7 THE COURT: Does it contain a computation of the
8 tax due?

9 THE WITNESS: All the teachers' names and
10 the amount due.

11 Q What is the amount due?

12 THE COURT: Back to the first one, it bears
13 the date.

14 THE WITNESS: 7/7/69.

15 THE COURT: What was the amount due as shown
16 on that?

17 MR. CRESCENZI: That is a total wage,
18 thirty seven thousand. Nine thousand two hundred
19 and seventy one dollars.

20 THE COURT: In the next quarters, what was
21 the amount due?

22 MR. CRESCENZI: Eight thousand nine hundred
23 and fifty one dollars.

24 THE COURT: Now, is it your testimony that
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2 those -- the originals of those facsimile copies
3 were signed by you in July, June or July of 1969?

4 THE WITNESS: Yes.

5 THE COURT: And mailed to the Internal Revenue
6 Service?

7 THE WITNESS: Yes.

8 THE COURT: With payment?

9 THE WITNESS: No.

10 THE COURT: Without payment?

11 THE WITNESS: Right.

12 THE COURT: No payment at all?

13 THE WITNESS: Just the return.

14 Then in '73 we received this bill that said
15 balance due.

16 THE COURT: All right, I suggest that be
17 marked for identification.

18 Q I show you this paper --

19 THE COURT: Ask about the circumstances.

20 Q Do these papers refresh your recollection?

21 A They came to me 4/10/73 to cover the first
22 period of '69 and they say the tax assessment is hundred
23 and fifty three sixty. Balance due one hundred fifty three
24 sixty which we paid with check number 1872.

25 THE COURT: When did you say you received that?

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2 THE WITNESS: In '73.

3 THE COURT: Have that marked for identifi-
4 cation as Defendant's Exhibit A.

5 THE CLERK: Document marked for identification
6 as Defendant's Exhibit A.

7 Q I likewise call your attention to a similar
8 document and ask you to tell the Court the circumstances?

9 A This is dated 4/10/73 for the second quarter
10 of '69. Assessment \$153.60. Balance due, \$153.60, paid
11 by check 1/8/73.

12 THE CLERK: Document marked for identification
13 as Defendant's Exhibit B.

14 (So marked for identification.)

15 (Pause.)

16 MR. CRESCENZI: May I mark them in evidence?

17 (Pause.)

18 THE COURT: Are you offering them in evidence?

19 MR. CRESCENZI: Yes.

20 THE COURT: Show them to Counsel.

21 MR. CRESCENZI: I would like to mark these
22 exhibits in evidence.

23 (Pause while Counsel examines documents.)

24 MR. MITCHELL: Your Honor, for the record
25 although they are material, they probably are not

1 particularly relevant to the Defendant's case.

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3 THE COURT: I thank you for your concession
4 that they are material. I am receiving them in
5 evidence. I am not sure in my own mind what they are
6 going to show. They certainly deserve consideration
7 and reflection.

8 MR. CRESCENZI: They are being offered to
9 show we filed the 941 as indicated certainly within
10 the time parameters available.

11 THE COURT: On their face they do not in fact
12 establish that. They do establish that at some
13 time in '73 the Government became alert to the fact
14 that there was an outstanding amount due with
15 respect to both those quarters. And billed the
16 taxpayer accordingly.

17 Whether it is possible to draw an inference
18 from that because of the fact that it was obvious
19 that the return as was claimed to have been filed
20 was for a substantially larger amount of money, and
21 that only that amount was billed as the balance,
22 might permit a finding that an earlier return had
23 been filed.

24 MR. CRESCENZI: Your Honor, it's right on here
25 (indicating). There is an indication when the earlier

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2 return was filed.

3 THE COURT: I haven't seen that. You will
4 have to show me that.

5 MR. CRESCENZI: There is the coding there
6 referring to the year and the month.

7 THE COURT: I can't follow you on coding.
8 Where do you --

9 MR. CRESCENZI: First quarter '69, six months.

10 THE COURT: That is only an indication --

11 MR. CRESCENZI: It couldn't come out of no-
12 where, it was generated by the return that was
13 filed.

14 THE COURT: What I am trying to say to you is,
15 what is your reasoning --

16 MR. CRESCENZI: It could not be generated --
17 reference to this quarter, first quarter '69 --

18 THE COURT: Wait a minute. Let's talk one
19 at a time. I have absolutely no question that this
20 bill relates to the first quarter of '69. I am not
21 questioning that. I am responding to your suggestion
22 that on its face it's proof that she filed the
23 return of '69. It doesn't show that.

24 MR. CRESCENZI: It is not proof but it is
25 the entry of a regular course of business, of a

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2 Government record, and there is all of the coding
3 that means that (indicating).

4 THE COURT: I am not making myself clear.

5 MR. CRESCENZI: I understand. I got your
6 message, your Honor. But, it is there.

7 THE CLERK: Defendant's Exhibits A and B
8 received in evidence.

9 (So marked in evidence.)

10 THE COURT: Now, is there anything else
11 pertinent to that?

12 MR. CRESCENZI: With respect to those two
13 quarters, that is it.

14 THE COURT: All right. Are you finished with
15 your direct examination as far as the witness is
16 concerned?

17 MR. CRESCENZI: Yes, your Honor.

18 THE COURT: Don't let me curtail you. Is
19 there anything further you wish to ask about the
20 matter?

21 MR. CRESCENZI: Yes, there is.

22 DIRECT EXAMINATION

23 BY MR. CRESCENZI: (Continuing)

24 Q I call your attention to the February 6th,
25 February 9th dates of 1976.

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3 Would you tell the Court -- I refresh your
4 recollection further with respect to the discovery and
5 disclosure proceedings going on with respect to the
6 Government witnesses, would you tell the Court the facts
7 and circumstances surrounding that which eventually resulted
8 in the so-called consent decree or judgment hearing?

9 MR. MITCHELL: I question the relevancy of
10 that at this point. That question goes beyond the
11 subject --

12 THE COURT: It does. Its rather a large
13 order question to begin with. You are asking this
14 witness, as I understand it, what if anything she
15 recalls.

16 MR. CRESCENZI: With respect to the discovery
17 and disclosure that was going on with the Government--

18 THE COURT: What does she know about it?

19 Q Would you tell the Court what you know about
20 that? The conversations, what was said?

21 THE COURT: Did you have conversations with
22 the Court at that time?

23 THE WITNESS: You mean February 6th, the
24 famous day?

25 MR. CRESCENZI: I will withdraw my question.

Q Were there discovery proceedings going on at

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2 about February 6th, 1976?

3 A Yes, Mr. Marcadis --

4 THE COURT: Who is that?

5 THE WITNESS: Special procedures of the
6 Internal Revenue Service. He was waiting to be
7 deposed when we went to this charade on February 6th.

8 May I say something about the first and
9 second --

10 Q Please be responsive.

11 A Two things, I would like to mention
12 Mr. Hecht of Flushing -- is he here? The Revenue Officer
13 of Flushing? If his statement under oath said I owed
14 money and I have that from the fourth quarter of '69,
15 eliminating the first and second, and I have that from
16 Mr. Trager --

17 THE COURT: Mr. Trager? You mean the
18 United States Attorney?

19 THE WITNESS: Yes. I have both of those
20 statements that say I owed for the fourth quarter
21 of '69.

22 THE COURT: Were the statements in writing?

23 THE WITNESS: Yes.

24 THE COURT: Where are they?

25 THE WITNESS: We submitted everything to

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2 Mr. Mitchell when he asked for it.

3 THE COURT: Mr. Mitchell?

4 THE WITNESS: Mr. Dick Mitchell.

5 THE COURT: Is your attorney aware of these
6 papers?

7 THE WITNESS: Mr. Taft submitted them to
8 Mr. Mitchell.

9 THE COURT: Do you know what --

10 MR. TAFT: Affidavits, I believe. I've seen
11 something taken --

12 THE COURT: I don't want to confuse things.
13 Not that I wouldn't give you an opportunity to
14 speak, but apparently the witness is suggesting there
15 is certain written material in which statements were
16 made.

17 Do you happen to know precisely what she is
18 referring to?

19 MR. TAFT: Yes.

20 A VOICE: Yes. When the injunction was taken
21 Mr. Hecht presented affidavits. It is in the
22 Court's documents.

23 THE COURT: If Counsel would identify precisely
24 what they are --

25 A VOICE: September, '75.

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2 THE COURT: Is there anything in the file
3 that is before the Court?

4 Mr. Taft, are you familiar with the documents
5 in question?

6 MR. TAFT: On a motion for a preliminary
7 injunction --

8 THE COURT: Made by whom?

9 MR. TAFT: By the Government. Mr. Trager
10 submitted a document during which time he limited
11 the periods that the Government was looking for
12 collection to twenty one taxable quarters beginning
13 with the fourth quarter of '69 through the fourth
14 quarter of '74.

15 This is a Court record so it is on file.

16 I think what they are saying is that this is
17 the original Government position.

18 THE COURT: All right. We will endeavor to see
19 what is going on.

20 MR. CRESCENZI: Your Honor, what I'm trying to
21 do is go to the heart of the consent judgment.
22 Because it is the unspeakable thing --

23 THE COURT: I am afraid it is a little late.
24 The only question is really as to the final judgment.
25 And in the interest of your client and of course

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2 justice and fair play, I am trying to finally
3 conclude that matter by evidence that the Court may
4 accept.

5 As I say, I am perfectly willing to accept
6 sworn affidavits by Government officials as to what
7 they stand for. I don't know exactly whether they
8 can be considered admissions against interest.
9 That may well be.

10 I will leave that up to Mr. Mitchell as to
11 how he would use them.

12 MR. CRESCENZI: Your Honor, I don't want to
13 tax the patients of the Court and I know it is
14 late but the rest of my examination would be with
15 respect to the so-called consent judgment.

16 THE COURT: I don't really feel that it would
17 be productive.

18 MR. CRESCENZI: Thank you, your Honor. No
19 further questions.

20 THE COURT: I think it would be beyond the
21 scope of this examination.

22 MR. CRESCENZI: Okay.

23 THE COURT: Mr. Mitchell?

24 MR. MITCHELL: Yes, your Honor.

25 CROSS EXAMINATION

BY MR. MITCHELL:

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2 Q You identified in the Court records an
3 attachment to your attorney's brief --

4 THE COURT: Have you seen those exhibits?

5 MR. MITCHELL: They weren't marked as
6 exhibits for the purpose of this hearing. I am
7 speaking of the photographic copies of the tax
8 returns.

9 THE COURT: Those are the documents she was
10 identifying while she gave her testimony on direct.

11 MR. MITCHELL: Among other things.

12 THE COURT: You have some questions?

13 MR. MITCHELL: Oh yes.

14 Q These materials were provided to me by your
15 attorney.

16 How did the copies come to be made?

17 MR. CRESCENZI: Objection, your Honor.

18 It is irrelevant.

19 THE COURT: Well, I am not so sure. I will
20 overrule the objection.

21 A You mean from the original?

22 Q Yes.

23 A Were they made from the original? No.

24 Q What are these copies of?

25 A We have copies of all the 941s.

1
2 Q Would you describe for me the making of the
3 original copy -- I am not making myself understood.

4 THE COURT: Perhaps I should show you what
5 is in the Court file because there does appear to
6 be authenticity involved.

7 I don't know what you are showing her that
8 may be different.

9 It looks as though that is prepared in
10 duplicate in some manner. I don't know whether those
11 differ from what you are showing the witness.

12 Q Let me ask questions on the document, the
13 Court records.

14 The documents in the Court records, do you
15 know how the documents were prepared? I am referring now
16 to Exhibit C to the attachments to the brief filed by
17 Mr. Taft.

18 A What do you mean by how?

19 Q Under what circumstances.

20 A Mr. Kajian in '69 --

21 THE COURT: Who is Mr. Kajian?

22 THE WITNESS: K-A-J-I-A-N.

23 THE COURT: Is he employed at the school?

24 THE WITNESS: He is headmaster of the school.

25 THE COURT: I see.

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Q On what were they prepared?

A What do you mean on what?

Q On a machine?

A Typewriter.

Q The returns were typed in 1969 on a typewriter?

A Yes.

Q I believe, if you examine it, you will see
that they were typed on two different typewriters.

MR. CRESCENZI: Objection.

THE COURT: I will overrule the objection.

A No, they weren't. I don't know.

THE COURT: You don't know?

THE WITNESS: I don't know why you assume they
were typed on two different typewriters.

Q It appears to me that way.

A No.

Q Do you know -- this is a photocopy document,
is that the original photocopy? I have a copy of a copy,
maybe a copy of a copy of a copy.

A I don't know. I can tell you one thing, it
was done on a xerox machine that made them very small.

Q The reduction -- the regular form is longer?

A Yes.

THE COURT: You had such a machine?

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2 THE WITNESS: It's down at the Rexall Drug-
3 store which doesn't exist any more.

4 THE COURT: You took it to the Rexall
5 Drugstore?

6 THE WITNESS: Yes.

7 THE COURT: It would be your testimony file
8 copies you had in your school's office, someone
9 brought to a nearby Rexall store and they were
10 reduced in size?

11 THE WITNESS: Yes.

12 Q Did you take them to the drugstore?

13 A With Mr. Kajian, as I recall. I don't recall
14 in '69.

15 Q You don't recall?

16 A I recall he wasn't there and made a
17 reproduction.

18 Q Was this your regular practice? Did you
19 always take your tax returns to the drugstore and photostat
20 them?

21 A No.

22 Q Why was it done to these two?

23 A I don't know. You are asking me specific
24 questions and I don't know. We do make copies of them.

25 Q Did you keep any other copies other than the

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photostatic copies?

A No.

Q Are you familiar --

A We sent the originals in if you want to know.

Q Are you familiar with the package you picked up from the Revenue Service for tax returns for this type of tax return?

A In a way, yes.

Q Don't you recall it is a pull-apart form and there is more than one copy there?

A I don't recall.

Q Do you know if you retained carbon copies of this return?

A I don't recall.

Q Did you bring copies of this return, these two returns, to your deposition -- I believe it was taken in December, 1975?

A I don't recall.

Q Do you recall being requested to bring copies of your tax returns to your deposition?

A No.

Q Of your own knowledge, when was the first instance in which any Government representative was shown those photostatic copies or copies of those photographic

1
2 copies?

3 A I don't recall. You see, these weren't the
4 ones in dispute when talking to Mr. Farrell.

#3 5 Q You are aware they were involved in the
6 lawsuit?

7 A No, they weren't. That's what I told you.
8 Mr. Trager said fourth quarter '69 and Hecht said fourth
9 quarter '69. These popped up later.

10 I am going back to '75 when the lawsuit
11 began, these were not in question as I recall.

12 They said fourth quarter '69.

13 Q Let me ask you another question, these two
14 documents, and in the right margin 1269, second, '69 --
15 do you know whose handwriting that is?

16 A Mr. Kajian.

17 Q I believe you also indicated in your opening
18 testimony these were not timely filed?

19 A Yes.

20 Q You agree it was not timely filed?

21 A In '69 you call it timely, not '74.

22 Q It was not --

23 THE COURT: When would it have been due?

24 MR. MITCHELL: First quarter '69, 30th of
25 April.

1 THE COURT: That means the date of June 16th --

2 MR. MITCHELL: July 7th.

3 THE COURT: So it was done timely in that
4 respect.

5 THE WITNESS: Yes.

6 Q I show you a document and ask you if you can
7 identify it?

8 A (No response.)

9 Q Can you identify that?

10 A I don't know. It's my signature. I can
11 identify that.

12 Q What does it appear to be?

13 A First quarter '69.

14 Q Would you compare it with the document you
15 previously identified, first quarter of '69, and agree
16 with me they are not identical?

17 A (No response.)

18 Q Well, let me withdraw that question.

19 You agree with me this is the carbon copy,
20 the tear-apart form -- this is the second half of the
21 tax return?

22 A (No response.)

23 Q Is that what it appears to be?

24 A I don't know what the tear copy looks like.
25

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2 Q Do you recall giving these documents to the
3 Internal Revenue Service?

4 A No. You mean by hand?

5 Q By hand or by letter.

6 A I don't recall.

7 Q Were you ever contacted by the Social
8 Security Administration concerning a claim for coverage
9 by an employee by the name of Francis Wood?

10 A I don't recall.

11 Q Isn't it a fact the \$153.00 assessment is
12 an assesement for coverage for payment of one employee
13 for one quarter?

14 A I don't know that to be a fact. No.

15 THE COURT: Are you referring to those bills
16 that had come in?

17 MR. MITCHELL: Yes, your Honor.

18 Q The copies of your returns that we discussed
19 show liabilities in the amount of some thousands of dollars,
20 one nine thousand dollars, another reported a tax of almost
21 nine thousand dollars, eighty nine hundred?

22 A Yes.

23 Q Do you have any record that you paid this
24 liability?

25 A No.

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2 Q Do you have any -- do you have any reason
3 to believe that you owed \$153.00 on each of these accounts?

4 A That's what it said. That's what we paid.
5 It said balance due.

6 Q But as far as your own records are concerned,
7 they would have shown when you got the bills you owed
8 substantially more?

9 MR. CRESCENZI: Objection, your Honor. The
10 question was already answered. She said she doesn't
11 have any records.

12 MR. MITCHELL: I believe the question was,
13 did she have any records of payments. I want to
14 make sure her testimony is clear.

15 THE COURT: Do you understand? You said earlier
16 in response to my question that you filed returns.

17 THE WITNESS: Without payment.

18 THE COURT: Is it your contention that there-
19 after you made payments on account of those two
20 orders? Is that your contention?

21 THE WITNESS: No, we were never assessed.

22 THE COURT: Until you got those bills?

23 THE WITNESS: Yes.

24 THE COURT: They assessed you in the amount
25 of \$153.00?

1 THE WITNESS: Yes.

2 THE COURT: That was the amount you paid?

3 THE WITNESS: Yes. We never received a bill,
4 that's what I mean by assess.

5 MR. MITCHELL: One moment, your Honor.

6 (Pause.)

7 MR. MITCHELL: I have completed my cross.

8 MR. CRESCENZI: No further questions.

9 THE COURT: You may step down.

10 Are you going to call anyone else?

11 MR. MITCHELL: I probably will call these
12 two gentlemen who have been waiting. I think it's
13 still Mr. Crescenzi's turn.

14 MR. CRESCENZI: I have no further witnesses.
15 Not with respect to the time bar.

16 THE COURT: Is there a need to have rebuttal?

17 MR. MITCHELL: Let me make a proffer of
18 evidence. I will recite what I think and possibly
19 I can get an agreement.

20 Mr. Gartman, a Revenue Officer will testify
21 in 1974 he was mailed this document by Miss Tassop
22 (indicating.)

23 Let me change that. I think I am being
24 corrected and properly so.
25

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2 That in August of '69 Mr. Gartman was mailed
3 this document by Miss Tassop. This document I will
4 identify, it has been referred to. It appears to
5 be the pull apart carbon copy of the tax return for
6 the first quarter of '69.

7 Mr. Copperill will testify that he prepared
8 dummy returns subsequently, substantially subsequently,
9 in 1973 or '74 for both quarters based upon this
10 carbon solely.

11 This is put into evidence to clarify why the
12 amount of the liability, \$92.71, the tax matches --
13 it matches and not shown on this document which is
14 fairly obviously a carbon of what we have in the
15 Court file.

16 It explains why the tax liability matches
17 and that in fact it is the same tax shown for both
18 quarters and it is relevant simply to show that we
19 did not base our assessment upon the original returns
20 even though the figures are identical.

21 THE COURT: Let me see if I follow. Where does
22 that take us?

23 MR. MITCHELL: It doesn't take us very far
24 at all. It's simply evidence of the fact that the
25 figures are congruent, it's not evidence. That fact

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2 is not evidence. We are relying upon the original
3 returns and making the assessment. It is not clear
4 to me that the Defendant has picked this point up
5 yet, but I would anticipate it done, so, as long
6 as the record is open --

7 MR. CRESCENZI: I am completely at sea. I
8 don't understand the explanation. If I had attempted
9 to read all of the names and amounts of extensions
10 and match it up with that, if there is something
11 that is different, I would concede to the differences.

12 THE COURT: Mr. Crescenzi, I don't think that
13 is the point. May I see the documents for a moment?

14 MR. TAFT: Is it the Services position that
15 it was received in 1969?

16 MR. MITCHELL: It is a fact. In 1969
17 Miss Tassop, at least that is what the evidence will
18 show, Miss Tassop, thinking she was asked to do so,
19 provided that copy to Mr. Gartman.

20 MR. TAFT: Is he a representative of the
21 Internal Revenue Service?

22 MR. MITCHELL: Yes.

23 MR. TAFT: In 1969, whether or not the returns
24 that you can't find are on record, there was a
25 return for that quarter on record. No tax paid but

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2 there was a return.

3 THE COURT: Since we have taken the time to
4 stay here, will you call Mr. Gartman to the stand
5 and let's get this on the record in testimony form.

6 I don't want him to feel he sat in the back
7 in vain.

8 O T T O R. G A R T M A N N, a witness called herein
9 was sworn by the Clerk of the Court and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MITCHELL:

13 Q Mr. Gartman, what is your present position
14 with Internal Revenue Service?

15 A Revenue officer.

16 Q What was your position in '69?

17 A Revenue officer.

18 Q In 1969, did you have an assignment with
19 respect to Miss Tassop?

20 A Yes.

21 Q Would you tell us what that assignment was?

22 A It was what we call a TDA, taxpayer's
23 delinquent account. Actually it represents a bill.

24 On the basis of that billing I made a contact
25 with Mrs. Tassop.

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Q Do you recall generally what year the account was involved?

A My recollection would be the last quarter of '67.

THE COURT: Do I understand your contact with this matter occurred in the year '69?

THE WITNESS: That is correct.

THE COURT: Some where late?

THE WITNESS: August of '69. I think the date was August 9th.

THE COURT: When you were assigned this matter?

THE WITNESS: That is correct, your Honor.

THE COURT: To do something about a delinquent account?

THE WITNESS: Yes.

Q I believe you said you contacted Miss Tassop?

A I called up the headquarters of the school to get the parties in charge. I believe it was Mrs. Tassop I spoke to. I received a response from Mrs. Tassop.

THE COURT: What was the form of the response?

THE WITNESS: A letter addressed to me. There was a note and the note was attached to the carbon copy of a 941 return for the first period of 1969.

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2 THE COURT: Did your inquiry of her ask for
3 a copy of any information she might have concerning
4 the filing of that return?

5 THE WITNESS: No. My business at hand was
6 to collect money and the submission of that
7 particular piece of paper that she sent was totally
8 irrelevant with my business with the school.

9 THE COURT: The fact is she did send you a
10 copy of something?

11 THE WITNESS: Of this 941 return, that is
12 correct.

13 THE COURT: Is that the document she sent you?

14 THE WITNESS: To the best of my recollection
15 that is a fact.

16 THE COURT: Are you going to mark that?

17 MR. MITCHELL: I previously had shown it to
18 Defense Counsel and provided a copy.

19 THE COURT: Mark it.

20 THE CLERK: Document marked for identification
21 as Plaintiff's Exhibit 2.

22 (So marked for identification.)

23 Q It is a little handwritten note --

24 MR. CRESCENZI: At this time I would hope the
25 Court would understand -- would be in some position

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2 to understand the shabbiness of the Government's
3 behavior in this matter.

4 THE COURT: That isn't going to help matters.

5 MR. CRESCENZI: Thank you.

6 Q Someone has written a comment not filed, do
7 you have any --

8 A I can't state for certain on that, I cannot
9 state.

10 Q What did you do with that document?

11 A I kept it as part of my case file as I
12 recall. I was quite at a loss to account for the receipt
13 of it because it had nothing to do with what I was asking
14 for.

15 Q You did not --

16 MR. CRESCENZI: Objection, your Honor, he is
17 leading.

18 MR. MITCHELL: I announced in open Court
19 what his testimony would be.

20 THE COURT: He explained his purpose was to
21 collect money.

22 Q Did you open a file on the first quarter of
23 '69?

24 A No.

25 MR. CRESCENZI: Objection, your Honor.

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2 Q Did you take any action with respect to this
3 return other than keeping it?

4 A No action whatsoever.

5 MR. MITCHELL: Thank you.

6 THE COURT: May I ask, you say you took no
7 further action, did you not make some internal
8 report that there appeared to be a delinquency or
9 confirmed delinquency?

10 THE WITNESS: I made an entry in my history
11 sheet to the effect I could not gather the relevancy
12 of sending me this when I made a demand for payment
13 on another period.

14 THE COURT: May I inquire, where are those
15 exhibits? Would you be familiar with forms such
16 as this (indicating)? I'm referring now to
17 Defendants' Exhibits A and B.

18 THE WITNESS: Yes, I am familiar with these
19 forms. Form 3552, they are part of documents that
20 Revenue Officers frequently made out when they make
21 out property assessments.

22 It's sort of a preliminary billing.

23 THE COURT: May I ask you whether either of
24 those documents could have any relationship to the
25 document that Miss Tassop sent you in response to

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2 your request some time earlier? Do you understand?

3 THE WITNESS: I see no connection whatsoever.
4 I would gather that these were made out as a
5 consequence of returns not being filed.

6 In other words, these conceivably could
7 have been or in my experience would represent
8 billings that result as a consequence of property
9 assessments made under IRC 6020B.

10 THE COURT: Why would there be a particular
11 balance due of \$153 -- whatever it was?

12 THE WITNESS: \$153.60 on one, on Exhibit A,
13 and \$153.60 on Exhibit B.

14 THE COURT: Why would those amounts be pulled
15 out of thin air?

16 THE WITNESS: I couldn't answer that.

17 THE COURT: Assuming, for example, that the
18 documents you received would be an indication that
19 an original return might well have been filed in or
20 about 1969 for the quarter in question, wouldn't
21 you have suspected that if there was an outstanding
22 amount -- at the time you were assigned to collect
23 the money -- wouldn't that have been on the basis that
24 it was -- that some collection of a large amount had
25 to be effected?

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2 In other words, what I am trying to say is
3 this, if someone had filed no return then they
4 wouldn't be sending you out to collect money. They
5 would be sending something out to find out why a
6 return had not been filed.

7 Does that make any sense?

8 THE WITNESS: Yes.

9 THE COURT: Would it not be logical to assume
10 that the reason you were placed on the case was that
11 the Service had some reason to believe from something
12 filed that the money was owing for the first quarter
13 of '69?

14 THE WITNESS: My mission here was specifically
15 for an earlier quarter. I had what is known as
16 a delinquent account, a bill for a prior quarter.
17 That's where my energy was supposed to be focused.

18 THE COURT: Your assignment occurred in
19 August, '69?

20 THE WITNESS: That is correct.

21 THE COURT: There were at least two prior
22 quarters in that year that would have been overdue?

23 THE WITNESS: Yes.

24 THE COURT: At least two by August, '69?

25 THE WITNESS: That's right.

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2 THE COURT: What I am trying to say is,
3 wouldn't your assignment in and of itself be an
4 indication that someone had information that tax
5 reports had been submitted without payment and you
6 were placed on the case to find out where was the
7 payment?

8 THE WITNESS: That is correct. I had an
9 open liability for an earlier period and naturally
10 that would have come into play also.

11 I would have asked as part of the routine
12 to bring the taxpayer current. That is true.

13 THE COURT: Of course, at the time you might
14 have had some records and notes which I take it you
15 don't have at the present time, is that correct?

16 THE WITNESS: In fact, we do have a document
17 which helped me reflect my recollection because it's
18 going back quite a few years.

19 My history sheet has possibly five or six
20 entries starting August 9 to August 24 I believe.
21 At the end of that August date the case was taken
22 from me and transferred to another officer.

23 I don't recall what the occasion was to make
24 a shift in assignment there.

25 With reference to my particular action on that

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2 case, I made my contact and made a demand for money
3 and I received a note attached to this return which
4 again was not responsive to what I was looking for.

5 Naturally, I have followed it further to
6 bring it to a head to make collection on the billing
7 that I had.

8 THE COURT: You didn't stay with it?

9 THE WITNESS: No.

10 THE COURT: Is the history sheet available
11 here?

12 THE WITNESS: I think it is, your Honor.

13 MR. MITCHELL: We have it, your Honor.

14 THE COURT: Well, may I see it?

15 That would have been your first entry?

16 THE WITNESS: That is correct.

17 THE COURT: There is nothing in that?

18 THE WITNESS: I have to stand corrected.
19 You are right, it's marked Page 1 dated August 6th,
20 1969.

21 THE COURT: There is nothing on that that
22 expressly says that, as to the amount claimed to be
23 due, is there anything in your notes that the
24 taxpayer is delinquent?

25 THE WITNESS: I made the phone call and

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2 Mrs. Tassop was not in at the time and I left a
3 message she should contact me. That was on the
4 6th.

5 Then I received on the 8th of August a
6 telegram from Headmaster Kajian, he is in Washington
7 on a diplomatic matter and will contact the Revenue
8 Officer on August 12th.

9 On the 13th I called the taxpayer. Again
10 apparently Mrs. Tassop was not in and I left a
11 message to contact me. I explained the urgency of
12 the matter.

13 On the 15th, I received a letter from
14 Mrs. Tassop containing a copy of a 941, the period
15 3/31/69, with a note stating that the Revenue Officer
16 will be contacted Monday, August 18th.

17 And I comment here that I see no connection
18 between the copy of the 941 and the TDA billing that
19 I had.

20 On the 19th, I spoke with Mrs. Tassop,
21 requested she state her position relative to
22 acknowledging liability and full payment, meaning
23 full payment of the bill. Or show why the money was
24 not owed.

25 I'm trying to get a conference.

1
2 She says she must contact her headmaster
3 Mr. Kajian.

4 On the 19th -- excuse me, this is a
5 continuing -- she must contact the headmaster
6 Mr. Kajian at the United Nations and get back to the
7 Revenue Officer.

8 I again explained the lien filing requirements.

9 On the 25th, I received a note from Mrs. Tassop
10 with Form 4188 indicating that the corporation was
11 entitled to a credit of \$7,281.56.

12 Miss Koula, apparently an employee of the
13 school, contends this credit had never been applied.

14 At that point, I leave the case. But it
15 appears from this history sheet she was contesting
16 the particular billing that I was trying to effect
17 collection on.

18 There was something, not by Mrs. Tassop,
19 by apparently one of the employees that there was
20 a credit due. That's where I left the picture.

21 THE COURT: You have no information in those
22 notes as to the amount of the particular TDA that
23 you were seeking?

24 THE WITNESS: No.

25 THE COURT: Would it be correct it related

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2 to 941 liabilities or could it be anything?

3 THE WITNESS: That would relate to a 941.

4 THE COURT: But your point was that the
5 TDA liability you were talking about did not have
6 reference --

7 THE WITNESS: Did not relate to that at all.

8 THE COURT: In your opinion, as an expert in
9 those matters, I suppose the TDA could have related
10 to earlier periods?

11 THE WITNESS: Yes.

12 THE COURT: The seven thousand dollar credit
13 then might well have extinguished the liability
14 being claimed as delinquent?

15 THE WITNESS: If that was in fact the case.
16 It could have conceivably, yes.

17 THE COURT: Well, I have exhausted my
18 imagination and questions.

19 Q Just so we are not altogether unclear on
20 a point, you said the file was opened in August, '69, had
21 you had earlier dealings with Miss Tassop?

22 A Yes.

23 Q When was that period of time?

24 A I believe the date was April, '69. That
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2 particular matter related to a taxpayer delinquency
3 investigation which means an investigation to ascertain
4 why the Internal Revenue records didn't show that certain
5 returns were filed.

6 Q That would not have been an investigation
7 for the first or second quarter of '69?

8 A No, the first quarter of '69 was not due
9 until April 3rd. I concluded that particular investigation,
10 I believe it was April 19 --

11 THE COURT: Would the conclusion of the
12 investigation have resulted in the filing of an
13 unfiled return?

14 THE WITNESS: No, it wouldn't relate to that
15 period, your Honor.

16 Again, I was able to refresh my recollection
17 from the records. The fact that I brought the
18 taxpayer current up to the fourth quarter of 1968 --
19 the first quarter of '69 was not in issue since
20 not due at the point that I terminated my investi-
21 gation.

22 THE COURT: When you say you managed to bring
23 her up to date, that would suggest that returns
24 were filed?

25 THE WITNESS: Returns were filed through '68.

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2 THE COURT: Not necessarily taxes paid?

3 THE WITNESS: Not necessarily, no.

4 Q When you say returns were filed, did you
5 specifically secure the returns?

6 A I did. Mrs. Tassop had a conference with
7 me in the Flushing office at which time we discussed the
8 delinquency and they brought the delinquent tax returns
9 to me.

10 Q At that point, you closed your file?

11 A The TDA investigation was closed.

12 MR. TAFT: I have a couple of questions since
13 we have an expert on collection on the stand.

14 CROSS EXAMINATION

15 BY MR. TAFT:

16 Q As an expert in collection, when you find
17 there are amounts outstanding, is there some sort of
18 proceeding for obtaining a lien against the taxpayer's
19 property, a levy for example?

20 A Is there a procedure? We do have levy
21 powers, yes. Depending on the circumstances in the
22 particular case.

23 Q If in 1973 the Government had determined that
24 no return 941 had been filed for 1969, would not the
25 application of a levy be part of your procedure?

1
2 A No, because a levy doesn't come into play
3 until we have an assessment. The mere fact that a return
4 hasn't been filed would have to initiate an investigation
5 to secure a return. Until we secure the return we don't
6 have an assessment.

7 Q So then an investigation would be made on
8 or about 1973 and an assessment would be made and a levy
9 would follow?

10 A Could follow, yes.

11 Q Will you say in an instance such as this
12 where we have a record of no return being filed or so it
13 said, the Government would normally conduct an investigation
14 and make an assessment or would they just let that sit?

15 MR. MITCHELL: If I may interpose an
16 objection, I think the next witness was involved in
17 all the processes and would be a much better witness
18 on this point.

19 MR. TAFT: I am testing his expert knowledge.

20 MR. MITCHELL: We have a lot of Revenue Agents.

21 MR. TAFT: There was a levy made in 1975,
22 two years after the '73 date which would normally
23 allow a lot of time. The levy began with the
24 fourth quarter of '69. This is on the record and I
25 would like to know why the first two quarters of '69

1 aren't in here.

2
3 And if there is something not in the Govern-
4 ment procedure which would cause that to happen.

5 THE COURT: Do you understand?

6 THE WITNESS: Not entirely. I got there was
7 a levy prepared and served in '73.

8 Q The levy was done in '75.

9 A At this point we do not have an assessment.
10 What is the date of this?

11 Q 1973.

12 A At this point no assessment has been made.
13 Before we can initiate this action we have to get an
14 assessment.

15 THE COURT: You can't get an assessment until
16 you get returns which show a liability?

17 THE WITNESS: Exactly.

18 THE COURT: I think what Mr. Taft is trying
19 to ascertain is the fact that that particular levy
20 document begins with the fourth quarter of '69.
21 What would you conclude from that?

22 THE WITNESS: Well, I have to say one thing
23 here, we have two types of levies. This is a 668B.
24 I will put my glasses on. We also have a 668A levy.
25 A 668B is used for the seizure of real property.

1
2 668A serves another purpose.

3 Q That doesn't answer the question.

4 THE COURT: I understand what you mean by
5 a levy against real property. I'm trying to find
6 out this, the fact that it beings with the last
7 quarter of '69, does that suggest to you that the
8 Government had no reason for asserting a levy for
9 prior periods?

10 THE WITNESS: Not necessarily, your Honor.
11 It could mean that an assessment had not come out
12 for a prior period.

13 Q Is it logical, you were in there for 1968
14 and this picks up in the fourth quarter of '69? Is it
15 logical the first three quarters of '69 would be skipped?

16 A It takes time to get an assessment. It is
17 possible it could happen that way, yes.

18 Q The Government could skip over --

19 A The Government intends to secure the return.
20 If they can't secure the returns, if they can't secure
21 the returns, if they have the power with reference to 941
22 to go into IRC60B, it takes time. Conceivably an early
23 assessment cannot necessarily be reflected on documents
24 like this.

25 THE COURT: Off the record.

(Off the record discussion held.)

MR. MITCHELL: We interrupted with Mr. Taft examining Mr. Gartmann. I am ready to rest. I can't rest until Mr. Gartmann is completed.

MR. TAFT: I have no further questions.

MR. MITCHELL: The Government will rest on that.

THE COURT: I am asking the Government, in light of our colloquy off the record, to submit a brief stating its position in light of this hearing and also including a recomputation of the total liability claimed.

All right?

MR. MITCHELL: Yes.

THE COURT: And Mr. Taft will have an opportunity to state his position on the bar and will not have to file his memorandum until he has had an opportunity to see your memorandum so he may include any disagreement with your figures.

MR. TAFT: Thank you for your time. We really appreciate it.

* * * * *

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM SUBMITTED PURSUANT TO 443a
EVIDENTIARY HEARING ON JUNE 23, 1977 (pp. 443a-450a)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA, :
Plaintiff :
v. : CIVIL NO. 75-C-1481
HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY ON : SUPPLEMENTAL MEMORANDUM OF THE
THE SOUND : UNITED STATES OF JUNE 1977
Defendant :
-----x

The Court requested that the plaintiff the United States file this Supplemental Memorandum with respect to those issues raised at the evidentiary hearing conducted on June 23, 1977. That hearing centered upon whether or not the defendant Helen K. Tassop filed her employment tax returns (Forms 941) for the first and second quarters of 1969.

DISCUSSION

I

FILING OF 1969 RETURNS

The plaintiff requests that this Court enter a finding of fact that the defendant Helen K. Tassop did not file her employment tax returns for the first two quarters of 1969. The Government's own records, as reflected in its Certificate of Assessments and Payments and in the testimony of Ms. Rita Murray, are unequivocal on this issue.

The only evidence offered by the defendant on this point is her own unsubstantiated testimony. That testimony, given the circumstances of this litigation and her own history, is not to be credited.

According to the testimony at the recent hearing, the defendant did not voluntarily file employment tax

returns for the preceding 1968 quarters, but rather those 444a
returns had to be secured by Revenue Officer Otto Gartmann.
Moreover, succeeding quarters, beginning with the fourth
quarter of 1969, through the fourth quarter of 1971,^{1/} were
also not timely filed, but these returns had to be secured
by Revenue Officer David Lapidus in May, 1972 (Tassop
Deposition, Dec. 10, 1975, pp. 18-19). Given this filing
history of blatant delinquency, it is most difficult to
accept the defendant's own testimony that she voluntarily
filed these two returns in the summer of 1969.

In August, 1969, when contacted by Revenue Officer
Gartmann, the defendant feared that he was conducting an
investigation concerning her failure to file the employment
tax returns for the earlier part of that year, and sent
him the carbon copy of the first quarter return as a "red
herring," in order to cause Mr. Gartmann to believe that
the original return had been filed through regular channels,
whereas in fact the defendant was retaining the original
return, because of her inability to pay the liability
reported thereon.^{2/}

^{1/} The manner of the defendant's operation of her school has
been such that there has been little, if any, liability for
the third quarter of each succeeding year, by virtue of the
fact that this quarter represents substantially the vacation
period, when the defendant seems to have had no regular
payroll. Hence, the fourth quarter of 1969 is effectively
the next regular quarter following the second quarter of 1969.

^{2/} Counsel for the defendant suggested at the recent hearing
that even if the defendant failed to file the original tax
return, her delivery to Mr. Gartmann of a carbon copy of
the return for the first quarter of 1969 constituted the
lawful filing for that quarter. Yet this retained copy
is clearly not the form prescribed for employment taxes.
The Commissioner's authority to prescribe proper forms
for reporting taxes has been sustained by the Supreme Court.
See Commissioner v. Lane Wells Co., 321 U.S. 219, 223-24
(1944). Moreover, from the testimony of both Mr. Gartmann
and Ms. Tassop, it is clear that the submission of the
carbon copy to Gartmann was never intended by anyone to
be an original filing.

At some later point, possibly when the quarters were placed into litigation, the defendant made photographic copies of the originals of each of these two returns, and has now submitted those photographic copies as having been made in 1969. This explanation does not, however, make any sense. Why would any employer, having the retained portion of the two-part return as a true copy (the "your copy" portion), then make a photographic copy of the original? After having made the photographic copy, why would Ms. Tassop then mail to Mr. Gartmann the "your copy" retained carbon while at the same time retaining the photographic copy of the original? The defendant's explanation is illogical, and should be disregarded by the Court.

Additionally, it must be noted that on October 1, 1975, the Government served its Notice to Produce upon the defendant. After several extensions, this production request was scheduled for December 10, 1975. Among the categories of documents requested were the defendant's retained copies of tax returns for quarters in litigation (Paragraph 4 of the Notice). Such copies, including those copies offered as defendant's evidence at the recent hearing, were not produced; see the Government's Motion for an Order Compelling Inspection, served on January 13, 1976. If the defendant gave so little significance to these photographic copies of tax returns that she saw fit not to produce them prior to the entry of the Consent Judgment, their value and their authenticity should now be appropriately discounted.

The defendant offered as evidence two bills (or notices) from the Internal Revenue Service, each in the identical amount of \$153.60, for the first and second quarters of 1969, respectively; those bills were issued in April, 1973.

The bills are consistent with the Government's evidence in this case. The Certificate of Assessments, Government Exhibit 1, sets forth the assessment adjustments of April 10, 1973, and the subsequent payments of April 24, 1973, each in the amount of \$153.60. Moreover, the defendant on cross-examination acknowledged that her own records indicated that her balances for these two quarters were greatly in excess of these amounts, so that apparently she does not contend that \$153.60 reflects the outstanding balance on each of her (allegedly) filed tax returns.

It was clear, however, during the course of the evidentiary hearing that these two bills for \$153.60 were presenting some confusion. There is a simple explanation for this matter, which does not bear upon the filing/non-filing issue to be resolved by the Court. The Government has therefore attached hereto as Government Memorandum Exhibit 1 a copy of a document generated by the Social Security Administration, entitled Notice of Determination of FICA Wages, dated April 25, 1972. This document reports that one Frances J. Woods had apparently sought to have her earnings records with the defendant Tassop corrected, that she had earned \$1,599.99 in both the first and second quarters of 1969, but had received no credit for earnings with the Social Security Administration.

That Frances Woods did earn \$1,599.99 from the defendant Tassop in the first quarter of 1969 is verified on the photographic copy of the tax return submitted by the defendant; however, the photographic copy for the second quarter reports that Ms. Woods earned only \$1,500. In any case, it is clear that the Internal Revenue Service treated Ms. Woods as earning \$1,599.99 in previously-untaxed wages for each quarter, and therefore sent the defendant Tassop a bill for employment taxes computed at the rate of 9.6 percent of gross wages; 9.6 percent times \$1,599.99 equals \$153.60.

This information, and the attached Exhibit, are not offered as evidence of the defendant's filing or non-filing for the two quarters at issue. The Government is not presently prepared to authenticate the underlying records of the Social Security Administration as to whether Ms. Woods was given proper earnings credits for the first and second quarters of 1969. However, these materials are submitted to explain why Internal Revenue mailed these two bills to the defendant Tassop.

The defendant herself has offered no explanation for her receipt of these bills, except to suggest that they represent some continuing confusion on the part of the Government with respect to these quarters. It should now be clear that Internal Revenue was simply responding to input from another agency, and that these bills received by the defendant certainly do not evidence a voluntary filing by her of these contested 1969 returns.

III

RECOMPUTATION OF TAX LIABILITIES

The Government submitted an Affidavit of Debt signed by the District Director of Internal Revenue, setting out

the defendant Tassop's accrued liability as of February 6, 1976; the balance thereon was \$297,093.50. 448a

The Court has requested the Government to recompute that liability, assuming that the assessments for the first and second quarters of 1969 are barred by the statute of limitations. These computations will be done separately for each quarter.

According to the District Director's Affidavit, the balance for the first quarter of 1969 (as of February 6, 1976) was \$10,874.77. However, that balance had itself been reduced by two credits totaling \$5,276.60, which credits the defendant has insisted upon being transferred to other accounts, should this account be barred by the statute of limitations.^{3/} Moreover, because the credits totaling \$5,276.60 were made approximately nine months prior to the execution of the District Director's Affidavit, the defendant may be entitled to some small interest credit.

Accordingly, the following table is submitted:

Balance on Account	\$10,874.77
Credits	5,276.60
Interest on Credits	356.17 ^{4/}
Lien Fee	6.00
	<u>\$16,513.54</u>

Accordingly, if the Court holds that the assessment for the first quarter of 1969 is time-barred, then the

^{3/} The Government will not transfer the two credits of \$153.60. These amounts paid in full certain small assessments against the defendant in 1973, and the statute of limitations for claiming any overpayment expired long ago.

^{4/} Computed on this basis: \$5,276.60 times 9 percent statutory interest times three-quarters of one year.

defendant's liability of \$297,093.50 should be reduced by \$16,513.54, for a total of \$280,579.96.

The District Director's Affidavit reports an outstanding balance upon the liability for the second quarter of 1969 in the amount of \$16,581.59. There are no credits to be added into this amount, and the only increment thereto is the \$6 lien fee, bringing the total to \$16,587.59. Accordingly, should the Court hold that the assessment for the second quarter of 1969 is time-barred, the defendant's balance of \$297,093.50 should be reduced by \$16,587.59, for a total of \$280,505.91.

Furthermore, should the Court hold that the assessments for both the first and second quarters of 1969 are time-barred, then the balance of \$297,093.50 should be reduced by a total of \$33,101.13, for a new balance of \$263,992.37.^{5/}

CONCLUSION

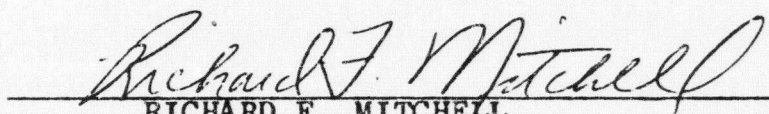
The only unresolved issue remaining in this litigation concerns the timeliness of the Government's assessments for the tax liabilities for the first and second quarters of 1969; all other matters are resolved and concluded.

In its Memorandum and Order of June 3, 1977, the Court directed the defendant to present on June 23, 1977, any plan that she had "for satisfying the judgment and averting the sale of the school." The defendant

^{5/} The Government would note that, even on the reduced amount, legal interest from February 6, 1976, to date should exceed \$20,000.

failed to present any plan to satisfy the judgment for taxes, whether that judgment be in the amount of \$263,992.37 or \$297,093.50. Accordingly, the Government requests that the Judgment for the Foreclosure of Federal Tax Liens and the Judicial Sale of Real Property, as previously lodged with the Court, be entered, so that the advertising may commence and a sale be concluded prior to the beginning of the school year in September.

Respectfully submitted,

A handwritten signature in cursive script, reading "Richard F. Mitchell", is written over a horizontal line.

RICHARD F. MITCHELL
Trial Attorney
Tax Division
U. S. Department of Justice
Washington, D. C. 20530

DAVID G. TRAGER
United States Attorney

PROSPER PARKERTON
Assistant U. S. Attorney

EXHIBIT 1 - NOTICE OF DETERMINATION OF FICA WAGES ANNEXED
TO FOREGOING MEMORANDUM

451a



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

NOTICE OF DETERMINATION OF FICA WAGES

☒ RSHI CLAIM ☐ DISB OR FREEZE ☐ NONCLAIM
☐ S/E INVOLVED, OAR 7000 PREPARED

TO: Internal Revenue Service
Philadelphia, Pa.

FROM: Social Security Administration
Williamsport, Pa.

2. THIS DETERMINATION IS FOR:
(Check one only.)

☒ WAGES PAID BY EMPLOYER

☐ EMPLOYEE TIPS REPORTED TO EMPLOYER

☐ EMPLOYEE TIPS NOT REPORTED TO EMPLOYER

EMPLOYER		WAGE EARNER	
3. E.I. NUMBER 11-1822476	ESTAB. NO. ☐ NO EIN	4. SOCIAL SECURITY NUMBER 162-12-8407	
NAME St. Andrew Academy		NAME Frances J. Woods	
TRADE NAME		COMPLETE HOME ADDRESS 227 5th Street, Ronovo, Pa. 17764	
COMPLETE ADDRESS 158-07 Riverside Drive, Beechhurst, N.Y. 11357		PERMISSION TO USE NAME ☒ YES ☐ NO	NATURE OF WAGE EARNER'S JOB School Teacher

INFORMATION OBTAINED AS A RESULT OF INVESTIGATION

5. PERSON CONTACTED BY SSA DISTRICT OFFICE—TITLE J. Kajjan, Headmaster	6. NATURE OF BUSINESS ☒ OTHER (Specify) School
7. CONTACT SHOULD BE MADE WITH St. Andrew Academy	8. IF OTHER THAN HOUSEHOLD, BUSINESS IS: ☒ OPERATING ☐ CLOSED
9. CONTACT SHOULD BE MADE AT Beechhurst, N.Y. 11357	10. OTHER EMPLOYERS INVOLVED IN REPORTING PROBLEM CORRECTED ON THIS FORM ☐ YES ☒ NO ☐ UNKNOWN

11. The Social Security Administration (SSA) has determined that the earnings record of the person named in item 4 is incorrect for each taxable period shown below and that the correct amount is as indicated in "e" below.

Legend	PERIOD TO BE CORRECTED (a)	SSA-BDPA RECORDS SHOW			CORRECT AMT.		TAXPAYER STATES RETURN OR BIC FILED ENTER DATE FILED OR "NO"	FOR SSA USE ONLY
		EO (b)	NR (c)	DOLLARS (d)	CENTS (e)	DOLLARS (f)		
(b) EO-Return in SSA-BDPA but EMPLOYEE OMITTED for wages (or tips).	3/69		X	None	1599 99		No	
(c) NR—SSA-BDPA records show NO RETURN for period.	6/69		X	None	1599 99		No	
(d) Amount reported on return in SSA-BDPA.								
(e) Amount established by SSA.								
(f) If NR but taxpayer states return filed, date is shown. If EO or wrong amount, but employer states 941c filed, date is shown. Otherwise, "No" is shown.								

NOTE TO IRS

If 10 is checked yes or unknown and a date is given in 11(f), complete item 1 on reverse.
If IRS determines amounts to be different from those shown under 11(e), complete item 2 on reverse.

FOR SSA-BDPA
USE ONLY →

12. ☒ CORRECT AMOUNT BASED ON STATEMENT SIGNED FOR EMPLOYER BY— J. Kajjan, Headmaster (Name and Title)	2/2/72 (Date)
☐ CORRECT AMOUNT BASED ON SSA O.O. CERTIFICATION OF EMPLOYER'S RECORD	
☐ CORRECT AMOUNT BASED ON OTHER EVIDENCE	
13. ☐ SSA DETERMINATION ATTACHED	☒ SSA DETERMINATION OR EXPLANATION IS (ALWAYS COMPLETE IF DETERMINATION NOT ATTACHED)

The above wages were not reported by employer.

(see other side)

We certify that the foregoing determination of fact and wage (or tip) amounts is based on supporting evidence in SSA Files.

DETERMINATION MADE BY:	APPROVED BY:
TITLE Claims Representative	TITLE [Signature]
DATE 2/8/72	DATE 7/25/72

FORM SSA-7010 (1-70)
(FORMERLY OAR-7010)

3 - INTERNAL REVENUE SERVICE COPY

Government Memorandum Exhibit 1

DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN RESPONSE TO PLAINTIFF'S. 452a
SUPPLEMENTAL MEMORANDUM (pp. 452a-458a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA, :

Plaintiff :

v. :

CIVIL NO. 75-C-1481

HELEN K. TASSOP, d/b/a :
ST. ANDREW ACADEMY ON :
THE SOUND :

ANSWERING SUPPLEMENTAL MEMORANDUM
FOR DEFENDANT

Defendant :

- - - - - x

The District Court requested that the defendant file this Answering Supplemental Memorandum after having first reviewed the Supplemental Memorandum of the United States of June 1977. Said Memorandum of the Government was received on June 29, 1977 at 1:40 P.M.

DISCUSSION

I

The Government's Supplemental Memorandum, in its first point offers idle speculation alleging, on page 2, that in August, 1969, defendant "feared"... and "sent him (Revenue Officer Gartmann) a carbon copy of the first quarter return as a 'red herring'," etc. This idle speculation does not move the case ahead one iota and should be totally disregarded by the Court as completely non-evidenciary remarks. Certainly, none of the speculation is related to the testimony of Mr. Gartmann and Miss Tassop. Mr. Gartmann made clear that at no time did Miss

Tassop believe or, was led to believe that he had anything to do with the 1969 year. Miss Tassop testified that she was in no way afraid of Mr. Gartmann but looked upon him for help and advice and attempted to totally cooperate with him.

In the final paragraph of point I, the Government raises the speculation with respect to why the copies of the 1969 returns were not previously submitted to the Government. The Government forgets that with all the back-and-forth discussions and the alleged Consent Judgment, Miss Tassop never really had the opportunity to produce what she considered "her side of the issue."

Accordingly, the Government has in no way explained away the defendant's position that she filed the appropriate tax returns in 1969 for 1969 and that, accordingly, by the time the assessment was made, the Statute of Limitations had run.

II

The Government's second point relates to the bills for \$153.60 which help point up the fact that the Government obviously had some record of tax returns and taxes due for 1969 since they billed Miss Tassop therefor. If, as the Government alleges, in its first point, the Government was so involved with the defendant's tax problems going back to the mid-1960's, it would certainly not have missed 1969. Yet, it has been attested to by the Government and by Miss Tassop that, when Agent Lapidus began his investigation, he testified during his deposition that

he checked with the appropriate record-keeping office of Internal Revenue and was advised that they had returns for the first three quarters of 1969. Accordingly, Agent Lapidus began his investigation with the fourth quarter of 1969. This is uncontroverted. It would seem that the Government has lost its files with respect to defendant's 1969 returns. At first glance, this might seem very unusual; however, the Government has already acknowledged that it cannot locate the delegation authority which authorized the liens being placed on defendant's property in relation to the fourth quarter of 1969 through 1972. Apparently, the Government's housekeeping is not too neat! Of course, defendant claims that the Government never properly obtained the delegation authority and so acted here in a wrongful and harmful manner. The Government's answer to this is merely that it has lost the file with respect thereto. So now, would it appear that they have also lost the files with respect to defendant's first two quarters of 1969?

III

It may be noted that the Government in computing defendant's tax liability, assuming that the assessments for the first and second quarters of 1969 are barred by the Statute of Limitations, did not take into consideration the fact that interest has been charged against the alleged tax liability since 1969 and penalties have been also charged, which penalties and interest must now be reversed and removed from the assessment. In addition,

the \$5,276.60 credit would bear interest to date and not merely for three-quarters of one year as if allocated to another year, it would have reduced that year's liability and stopped the running of interest and penalties on that additional liability. Accordingly, the Government's computations are wrong. It is respectfully requested that the Court reorder the Government to make a new and proper computation taking into account the above. Our computation indicates that with proper credit given for reduction of interest and penalties, the new balance would be more like \$230,000.

IV

The Court has requested counsel for defendant to look into the question of the implication of giving Mr. Gartmann a signed carbon copy of the return for the first quarter of 1969. The Internal Revenue Code and the Regulations thereunder would appear to indicate that if Mr. Gartmann were working out of the District Director's Office, a filing by mail properly addressed to the Office of the District Director, attention of Mr. Gartmann, might well be acceptable as a proper filing. There is no current law under the '54 Code which really bears upon this issue. Certainly, the fact that it is not the original but a fully executed duplicate original, does not make it less of a tax return. Section 6091(b)(1) provides that a return shall be made in the Internal Revenue District in which is located the legal residence or principal place of business of the person making

the return; or, at a Service Center serving the Internal Revenue District referred to above. Since Mr. Gartmann was working out of the District Office and the defendant had mailed the form to the District Office to his attention, it would be consistent to believe that even that return was appropriately filed and that Mr. Gartmann had an obligation to pass that return on to the District Director since it had no relation to his work with the taxpayer.

V

The final issue relates to the defendant's plan for satisfying the Judgment and averting the sale of the School. The defendant testified that the Government had made it impossible for her to raise mortgage money on the premises in question because of the illegal liens which had been recorded in the County Clerk's Office for Queens County and had not been removed since the Consent Judgment and the Government's offering as quid pro quo for Miss Tassop's consenting, the stipulation that the liens were indeed invalid. At that time, had the liens been removed, defendant could have obtained a substantial mortgage and then paid off the Consent Judgment without jeopardizing her School further. The Government affirmatively provided this in a "Catch-22" situation whereby interest and penalties kept running because defendant could not raise the funds to pay the Judgment because the Government would not remove the invalid liens. If the Government releases these liens now, defendant

will be able to obtain between \$150,000 and \$200,000 in mortgage monies which will pay off the first and second mortgages and leave approximately \$100,000 to \$150,000 to apply to the Consent Judgment. The balance of between \$80,000 and \$130,000 would be paid off in equal annual installments over the next five years, all financial dealings of the School to be supervised by the Finance Committee of Church representatives. In this way, defendant will not again be able to get into trouble, the School will be saved for the benefit of the community and the City of New York, and the Government will receive its proper monies. It may be noted in passing that, if the Government forces the sale of the School, it will probably not receive enough income to pay the liability and then several hundred students will be forced into the City school system, and at least thirty to fifty teachers placed on unemployment. The cost of this to the City could be \$750,000 a year, which is three times the amount of the assessment. It should be obvious that everything should be done to facilitate the plan for paying the Consent Judgment without destroying the School. To this end, defendant will cooperate in every way possible.

CONCLUSION

WHEREFORE, it is respectfully submitted that the Consent Judgment be modified to an amount reflecting the elimination of assessments relative to the first and second quarters of 1969, including penalties and interest, and that the balance of the

458a

assessment be permitted to be paid off by defendant by a large initial down payment and the balance over a five-year period under the supervision of a Finance Committee from within the body of the Greek Orthodox Church.

Respectfully submitted,

ROBERT S. TAFT
Attorney for Defendant
200 Park Avenue
New York, New York 10017

LETTER FROM ROBERT S. TAFT TO HONORABLE EDWARD R. NEAHER
ON JULY 13, 1977

459a

(pp. 459a-460a)

MILLER, MONTGOMERY, SOGI, BRADY & TAFT

200 PARK AVENUE

NEW YORK, N. Y. 10017

(212) 687-1700

CABLE: SEDREG

TELEX: 424528

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TAIWAN OFFICE
SOGI & LIN
37-9 CHUNG SHAN ROAD
N. SEC. 2, TAIPEI

RICHARD W. BRADY
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BEN I. HARAGUCHI
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MICHAEL R. MILLER
MICHAEL D. MOPSICK
LOIS J. NAFTULIN
ROBERT M. SCHWARTZ
MICHAEL J. SMITH

COUNSEL
HAROLD A. TAFT

13 July 1977

*NOT ADMITTED IN N.Y.

Honorable Edward R. Neaher
United States District Judge
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Helen K. Tassop, et al.,
Civil No. 75-C-1481 - (E.D.N.Y.)
Our File No. 18-0204

Dear Judge Neaher:

I am in receipt of the Justice Department's letter of July 8. Since correspondence is not in the regular course of practice, I feel an answer is required and accordingly have prepared this letter.

The Justice Department's letter talks about the Government's figures being taken directly from the District Director's affidavit and places some sort of mystical aura around them as if they are 100% accurate and not subject to challenge. We have already seen that this is not true with respect to Governmental records. In point of fact, the items under question taken from the Government's records (as per that large chart prepared by the Government as Exhibit A to Mr. Ferrell's affidavit) indicate that for the first quarter of 1969, \$9,271.70 was assessed and a similar amount was assessed for the second quarter of 1969. To this were added penalties and interest which brought the total for the first quarter of 1969 to \$15,527.81; the total for the second quarter became \$15,384.88. Against this was applied \$5,276.60 which should otherwise have been applied against the next open liability. This would then have reduced penalties and interest on said open liability in the amount of at least \$500.00. In addition, we see lien fees on Mr. Ferrell's Exhibit A in the amount of \$72.00, which apparently then become part of the overall balance due and owing and thus in themselves become the subject of interest and penalties. By my calculations alone based on Exhibit A provided by the Government, we have a reduction of at least \$36,761.29.

In the letter accompanying the copy of the letter to you, the Justice Department explains that the interest and penalties for failure to file and failure to pay have been computed from the due dates for the respective returns; thus, notice of the assessment and demand for payment would appear to be irrelevant. The letter refers this writer to Sections 6601 and 6651 of the Internal Revenue Code. Under §6601(e)(3), interest is imposed on penalties. Under §6651, it points out that penalties shall not be applied

Honorable Edward R. Neaher

-2-

13 July 1977

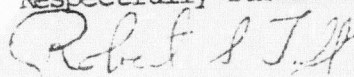
until a specific amount of tax is stated in a notice and demand. This is because the penalties are a percentage of the amount of tax. Since notice and demand were not given by the Government, with respect to the fourth quarter of 1969, and the first, second and fourth quarters of 1970, 1971 and 1972 (as per the Consent Judgment's consideration given by the Government of admitting that the liens were invalid) then penalties could not be attached to the taxes due for these quarters and interest and penalties could not run for the taxes due for these quarters. This totals about \$40,000, which amount is really the consideration the Government gave to Miss Tassop when she consented to the Consent Judgment. In fact, the Government was saying, "If you consent to the Judgment, we will give up the penalties and interest on penalties on the periods wherein assessment was not made so that the liens were not valid. You then have thirty days to come back to Court with your computation and submit it to the Judge."

This is the crux of Miss Tassop's problem in that the Government immediately denied the consideration for Miss Tassop's consent on the flimsy argument that Miss Tassop threatened to take action to set aside the consent. The only reason she wished to set aside her consent is that the Government withdrew its quid pro quo. If we then add the two figures together we have a tax, penalty, interest reduction in the amount of \$76,761.29. When this is taken from the \$295,000 figure which the Government claims is due, we achieve a net result of \$218,238.78 due and owing to the Government.

This brings me to the final point with respect to the Government's letter to you. Once again, the Justice Department is belittling Miss Tassop's offer to raise the money to pay off the taxes. Apparently, Mr. Kikel has now become aware that because of the usurious rate of interest being charged on the second mortgage, it would seem in balance that there is no money due and owing on the second mortgage. This leaves the first mortgage, which is under \$10,000. The properties are worth about \$500,000 in an arm's-length transaction. The area is not red-lined and so it would seem not too difficult for Miss Tassop to obtain the mortgage money she has applied for. On the other hand, a forced sale by the Government would, even in the Government's opinion, bring in less than \$100,000 and, after expenses is very little for the Government for its effort. The Government should be pleased to cooperate with Miss Tassop to enable her to obtain the largest possible mortgage to pay for the taxes due. The Government has not even lifted the liens on the properties, most of which are invalid, as per the Consent Judgment.

When considering the financial burden upon New York City to be incurred by losing the School, the minimal recovery of a forced sale of the properties and the chance of a complete recovery by properly managing and mortgaging the properties in the future, the only solution would be to permit Miss Tassop to go for the financing and to continue the School for the benefit of the Community children.

Respectfully submitted,


Robert S. Taft

RST:mfg

cc: Richard F. Mitchell, Esq.
Gene Crescenzi, Esq.
Miss Helen K. Tassop

LETTER FROM MYRON C. BAUM TO HONORABLE EDWARD R. NEAHER

ON JULY 8, 1977

(pp. 461a-463a) 461a

(Filed July 18, 1977)

UNITED STATES DEPARTMENT OF JUSTICE



WASHINGTON, D.C. 20530

July 8, 1977

Address Reply to the
Division Indicated
and Refer to Initials and Number

MCB:JF:RFMitchell:rad
5-52-13040

Honorable Edward R. Neaher
United States District Judge
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Helen K. Tassop, et al.,
Civil No. 75-C-1481 - (E.D.N.Y.)

Dear Judge Neaher:

We have received and reviewed the defendant's Answering Memorandum of July 1, 1977, and we would like to make the following comments.

The defendant has claimed that the Government's recomputation of tax liabilities is erroneous, that we have in some manner failed to reverse certain assessments for penalties and interest. The defendant suggests that her recomputed liability should be about \$230,000, rather than \$263,992.37 -- almost twice the reduction reached by the Government.

The allegations of the defendant are without any basis. The Government's figures are taken directly from the District Director's Affidavit setting forth the defendant's liability as of February 6, 1976; this Affidavit has previously been filed with the Court. The respective balances on that Affidavit for the two quarters now in dispute are \$10,874.77 and \$16,581.59. These figures include all interest and penalties accrued through February 6, 1976, which is the computation date for purposes of the Consent Judgment. Accordingly,

- 2 -

these two balances were reversed in our recomputation. To suggest that some interest and penalties accruing before February 6, 1976, have been omitted is to suggest that the District Director's Affidavit is itself understated. Any interest and penalties accruing after February 6, 1976, are, of course, irrelevant for purposes of this recomputation.

The defendant suggests that the payments of \$5,276.60 should reduce her liability for interest and penalties by some greater amount than that put forward by the Government. The payments were made in May, 1975, and the computation date is nine months later, in February, 1976. The Government has, in its calculation, given the defendant adequate interest credit for these nine months. No delinquency penalties would be affected, because they would have accrued long before May, 1975.

The defendant has submitted no recomputation of liability, and her suggestion that her liability should be reduced to about \$230,000 is factitious. Her present challenge to the Government's figures appears to be nothing more than an attempt to delay this litigation.

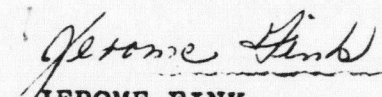
The defendant's suggestion that she can refinance her properties for up to \$200,000 is the same shopworn proposal that has been made off and on to the Government for the past two years; however, the defendant has never been able to produce any mortgage commitment for such an amount. Her proposed distribution of the loan proceeds is inconsistent with the reported balances on the prior mortgages. The defendant's financial history makes her five-year payment proposal unrealistic, and her refusal to cooperate in settlement negotiations makes the proposal altogether unattractive to the Government.

We appreciate this opportunity to present our further views on this litigation.

Sincerely yours,

MYRON C. BAUM
Acting Assistant Attorney General
Tax Division

By:


JEROME FINK
Chief, Civil Trial Section
Northern Region

cc: Robert S. Taft, Esq.
Miller, Montgomery, Sogi,
Brady & Taft
200 Park Avenue
New York, New York 10017

Gene Crescenzi, Esq.
415 Lexington Avenue
New York, New York 10017

Armin J. Kikel, Esq.
65-01 Fresh Pond Road
Ridgewood, New York 11227

John M. Graham, Jr., Esq.
Thomas & Graham
36-17 Thirtieth Avenue
Long Island City, New York 11103

United States Attorney
Brooklyn, New York

Chief Counsel
Internal Revenue Service

JUDGMENT FOR THE FORECLOSURE OF FEDERAL TAX LIENS AND THE
JUDICIAL SALE OF REAL PROPERTY DATED JULY 27, 1977 (pp. 464a-470a)
(Filed July 27, 1977) 464a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 27 1977 ★

TIME A.M. _____
P.M. _____

-----X
UNITED STATES OF AMERICA,

Plaintiff

v.

CIVIL ACTION NO. 75-C-1481

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND;
TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN
ASSOCIATION; ESTELLE
LEIBOWITZ LUNGO, Executrix
of Estate of HOWARD
LEIBOWITZ,

Defendants

FILED

JUDGMENT FOR THE FORECLOSURE
OF FEDERAL TAX LIENS AND THE
JUDICIAL SALE OF REAL PROPERTY

-----X
Upon consideration of the motion of the plaintiff,
United States of America, for a Decree of Foreclosure and
Judicial Sale, the parties having been heard and the court
having considered all other pleadings, records, affidavits
and other documents filed in this cause including the
opposition of the defendants, Helen K. Tassop and Tassop
Realty, Inc., to said motion; and the Court having entered
a Judgment for unpaid federal taxes dated February 9,
1976 against Helen K. Tassop, d/b/a St. Andrew Academy on
the Sound as modified by Order dated July 27, 1977 in the
amount of \$263,992.37; and Estelle Leibowitz Lungo,
Executrix of the Estate of Howard Leibowitz, having been
substituted as a party defendant for Howard Leibowitz,
Deceased, it is hereby

ORDERED that the plaintiff, United States of America, is entitled to satisfy the tax liability of Helen K. Tassop, d/b/a St. Andrew Academy on the Sound by the foreclosure of its tax liens described in paragraph 4 of its motion for a Decree of Foreclosure and Judicial Sale pursuant to 26 U.S.C., Section 7403 against the real property hereinafter described titled in the name of Tassop Realty, Inc. and, also, to the judicial enforcement of its February 9, 1976 Judgment as modified by Order dated July 27, 1977 in the amount of \$263,992.37 pursuant to Rule 69 of the Federal Rules of Civil Procedure and it is further

ORDERED, as follows:

1. That the United States Marshal in and for the Eastern District of New York, or his representative, be and he is hereby authorized pursuant to 28 U.S.C., Sections 2001 and 2002 to offer for sale at public auction real property situated in Queens County, Brooklyn, New York, being known by street number as 158-07 Riverside Drive, Beechhurst, Flushing, Brooklyn, New York, titled in the name of Tassop Realty, Inc. and more particularly identified and described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being at Beechhurst, in the Borough and County of Queens, City and State of New York, known and designated as Plot "A" and part of Plot "B" in block no. 39 as shown on a certain map entitled, "Map of Beechhurst (Whitestone Landing) situated in the Third Ward of the Borough and County of Queens, City and State of New York, property of Shore Acres Realty Company, surveyed September 1906 by Charles U. Powell, C.E. & S.," and filed in Queens County Clerk's Office, now Register's Office On December 10, 1906, as map No. 986, New No. 1974, which plot and part of plot taken together as one composite parcel and more

particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Riverside Drive, (Formerly Sylvan Place) (30 feet wide) with the easterly side of 158th Street (formerly Harbor Road) (50 feet wide);

RUNNING THENCE along the easterly side of 158th Street, 152.75 feet to the sea wall;

THENCE along said sea wall, SOUTH 59 degrees 16 minutes east, 3.44 feet;

THENCE continuing along said sea wall as the same curves to the right along the arc of a circle having a radius of 100 feet, a distance along said curve of 65.70 feet to a point of Tangent in said sea wall;

THENCE along said sea wall, north 89 degrees 01 minutes 30 seconds east, 86 feet;

THENCE southerly parallel with the easterly side of 158th Street 174.31 feet to the northerly side of Riverside Drive; and

THENCE westerly along the northerly side of Riverside Drive, 149.66 feet to the corner, the point or place of BEGINNING.

TOGETHER with all right, title and interest, if any, of Tassop Realty, Inc., in and to any streets and roads abutting the above described premises to the center lines thereof, together with all riparian rights of Tassop Realty, Inc.

TOGETHER with all fixtures and articles of personal property now or hereafter attached or appurtenant to or used in the operation of said premises, including (but not limited to) plumbing, heating, lighting and cooking fixtures, air-conditioning fixtures and units, ranges, refrigerators, radio aerials, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, window screens, awnings, storm windows, window boxes, storm doors, screen doors, mail boxes, weather vanes, flag poles, pumps, shrubbery and outdoor statuary, all of which shall be deemed to be and remain a part of the realty.

2. That the United States Marshal in and for the Eastern District of New York, or his representative, be and he is hereby authorized pursuant to 28 U.S.C., Sections 2001 and 2002 to offer for sale at public auction that parcel of real property situated in Queens County, Brooklyn, New York, being known by street number as 157-50 Ninth Avenue, Beechhurst, Flushing Brooklyn, New York, titled in the name of Tassop Realty, Inc. and more particularly identified and described as follows:

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in the Borough and County of Queens, City and State of New York, known and designated on a certain map entitled, "Map of Beechhurst, (Whitestone Landing), situated in the 3rd Ward, Borough of Queens, City of New York, property of Shore Acres Realty Company, surveyed September 1906 by Charles U. Powell, C.E., Flushing, N.Y.", and filed in the Office of the Clerk of the County of Queens, now Register's Office, on December 10th, 1906, as Map No. 986, new No. 1974, as and by the lots No. 26, 27, 28, 29 and 30 in block 19, which said lots when taken together with reference to said map are bounded and described as follows:

BEGINNING at a point on the southerly side of 9th Avenue (formerly 33rd Street) distant 170 feet westerly from the corner formed by the intersection of the southerly side of 9th Avenue (formerly 33rd Street) with the westerly side of 160th Street (formerly 16th Avenue;

RUNNING THENCE southerly parallel with 160th Street, 100 feet;

THENCE westerly parallel with 9th Avenue, 100 feet;

THENCE northerly parallel with 160th Street, 100 feet to the southerly side of 9th Avenue;

THENCE easterly along the southerly side of 9th Avenue, 100 feet to the point or place

- 5 -

TOGETHER with all right, title and interest, if any, of Tassop Realty, Inc., in and to any streets and roads abutting the above described premises to the center lines thereof.

TOGETHER with all fixtures and articles of personal property now or hereafter attached or appurtenant to or used in the operation of said premises, including (but not limited to) plumbing, heating, lighting and cooking fixtures, air-conditioning fixtures and units, ranges, refrigerators, radio aerials, bathroom and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, window screens, awnings, storm windows, window boxes, storm doors, screen doors, mail boxes, weather vanes, flag poles, pumps, shrubbery and outdoor statuary, all of which shall be deemed to be and remain a part of the realty.

3. That the said parcels of real property be sold by public auction at a time and place situated in Queens County, either on the premises themselves or at any other place in accordance with the provisions of Title 28 U.S.C., Section 2001, to be announced by the United States Marshal after first being advertised once each week for four (4) consecutive weeks preceding the time fixed for such sale in a daily newspaper of general circulation in Queens County, New York, and by any other notice that the United States Marshal or his representatives in his discretion may deem appropriate.

4. That each of said parcels of real property shall be sold as separate units to the highest bidder for each, with plaintiff having the right to withdraw the property from bidding at any time prior to the acceptance of a bid, if, in plaintiff's opinion, the bids are inadequate.

5. That said properties shall be sold free and clear of all liens and encumbrances.

6. That no bids (except as to the United States) shall be accepted unless the same is accompanied by a certified check or a cash deposit of at least ten percent (10%) of the amount of the bid.

7. The balance of the purchase price for each property shall be tendered to the United States Marshal by the successful bidder within thirty (30) days following the date of the sale in the form of a certified check. In the event the purchaser fails to fulfill this requirement, the deposit made by him shall be forfeited and applied to the expenses of the sale and the property shall be reoffered for sale. The said sale is subject to confirmation by the Court, at which time title to each parcel shall be executed by the United States Marshal to the successful bidder by deed.

8. That pending the sale of the above-described parcels of real property as ordered herein, and for the purpose of preserving the said properties and placing them in a proper condition of sale, the United States Marshal is authorized to take possession and custody of the real property, to have free access to the premises and to take all action necessary to preserve the said properties between the date of this Order and date of confirmation of sale by this Court.

9. The balance of the proceeds from the sale of the above-described parcels of real property, after deduction of the expenses of sale, shall be distributed in accordance with the following priorities:

First. All unpaid real estate taxes or other charges that are liens on the said property under local law, adjusted to the date of sale.

Second. The sum required to satisfy the outstanding mortgages of Astoria Federal Savings and Loan Association on each of said parcels of real property.

Third. The sum required to satisfy the outstanding mortgages of the Estate of M. Howard Leibowitz on each of said parcels of real property.

Fourth. The tax liens and Judgment of the United States against Helen K. Tassop doing business as St. Andrew Academy on the Sound.

10. In the event that the proceeds of sale of the real estate described above are insufficient to satisfy the claims of the United States, the United States shall have a deficiency judgment in the amount of the unsatisfied portion of its claim and execution shall issue thereon.

DATED, Brooklyn, New York, the 27th day of

July, 1977.

Edward R. Neaher

UNITED STATES DISTRICT JUDGE

MEMORANDUM AND ORDER OF NEAHER, J. DATED JULY 27, 1977
(Filed July 27, 1977) (pp. 471a-476a)

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND;
TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCI-
ATION; ESTELLE LEIBOWITZ LUNGO,
Executrix of Estate of HOWARD
LEIBOWITZ,

Defendants.

75 C 1481

MEMORANDUM
AND
ORDER

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

JUL 27 1977

TIME A.M. _____
P.M. _____

APPEARANCES:

DAVID G. TRAGER, ESQ.
United States Attorney,
Eastern District of New York
Attorney for Plaintiff

and

MYRON C. BAUM, ESQ.
Acting Assistant U.S. Attorney
General, Tax Division, United
States Department of Justice
By RICHARD MITCHELL, ESQ.
Trial Attorney

GENE CRESCENZI, ESQ.

and

HATFIELD, BRADY & TAFT
Attorneys for Defendants Helen
K. Tassop and Tassop Realty, Inc.
By ROBERT S. TAFT, ESQ.

NEAHER, District Judge.

This is an action brought by the United States to foreclose tax liens and to recover the amount of federal income tax and Social Security tax which defendant Helen K. Tassop was legally obligated to withhold from the wages of her employees at The St. Andrew Academy on the Sound, a private school affiliated with the Greek Orthodox Church.

On February 6, 1976 Tassop consented to judgment against herself in return for the government's concession that several liens were invalid. The amount of the judgment, originally \$275,000, was subject to subsequent modification. The government's motion to increase the amount of the judgment to \$297,093.50 was granted on May 7, 1976. After numerous delays catalogued in this court's memorandum and order of June 3, 1977, a hearing was held on June 23, 1977 to determine whether the amount of the judgment should be decreased on the ground that an assessment for two quarters in 1969 is time-barred.

The United States may not file suit to collect any tax unless the amount of the tax was assessed within three years after the return was filed. 26 U.S.C. §6501(a). Even

a filing after the prescribed date begins the running of this limitations period. Id.

On October 28, 1974 the government assessed the amount of taxes owed by Tassop for the first two quarters of 1969. At the hearing on June 23, 1977, Tassop testified that she filed returns for those two quarters "on time." Were this true, the assessment made in 1974 would be time-barred. An Internal Revenue Service ("IRS") employee, on the other hand, testified that current IRS records indicate that Tassop did not file returns for the first two quarters of 1969.

In support of her testimony Tassop submitted photostat copies of the two returns in question. Her copy of the first quarter return, which was due on April 30, 1969, is dated July 7, 1969. Her copy of the second quarter return, due on July 31, 1969, is simply dated July 1969.

Tassop also introduced into evidence copies of two bills which she received from the government in 1973. One of them states that there was \$153.60 due on her return for the first quarter of 1969, and the other states that the same amount was due on her return for the second quarter of 1969. The government alleges that these bills were the result of

efforts by one of Tassop's employees, Frances Woods, to correct her earnings record with the Social Security Administration ("SSA"). A copy of an SSA document submitted by the government shows that on February 8, 1972 an SSA claims representative determined that, whereas SSA records showed that Woods had no earnings for the first two quarters of 1969, she had earned \$1,599.99 in each quarter. Typewritten on the form is the following statement: "The above wages were not reported by the employer."

The court cannot base an inference of non-filing on such inconclusive evidence. The court's experience in Social Security review cases indicates it is not uncommon for SSA earnings records to omit wages or salary payments which have been reported by employers. Here, moreover, there is evidence that an IRS agent testified at a deposition that he had been advised by someone at the IRS record center that Tassop had filed returns for the first two quarters of 1969. Another IRS agent admitted at the hearing that on August 15, 1969 he had received from Tassop a copy of her return for the first quarter of 1969.

All in all, Tassop's evidence seems to preponderate in her favor, whatever IRS current records may reflect. Therefore, the government is barred from attempting to collect taxes owed by Tassop on her returns for the first two quarters of 1969.

According to the government's figures, the amounts in issue are \$16,513.54 for the first quarter of 1969 and \$16,587.59 for the second quarter of 1969. Tassop's challenges to those figures, and her suggestions for further reductions in the amount of the judgment, are rejected. The final amount of the judgment against Tassop, therefore, is \$263.992.37.

Since Tassop has failed to come forward with any firm plan for satisfying the judgment and averting the sale of the school, the court has no alternative but to enter judgment for the foreclosure of the federal tax liens and the judicial sale of the school and the surrounding property.

Finally, now that the amount of the consent judgment is resolved, the government is directed to vacate the liens which it conceded were invalid at the time Tassop consented to judgment against herself.

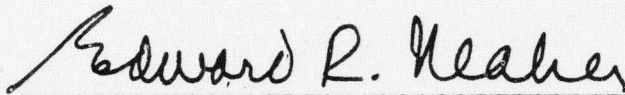
476a

Accordingly, the judgment entered on February 9, 1976, as amended on May 27, 1976, is further amended to provide that

"the plaintiff, the United States of America, recover of the defendant, Helen K. Tassop, d/b/a the St. Andrew Academy of the Sound, the sum of \$263,992.37, with interest thereon as provided by law."

On this date the court is also entering an appropriate judgment for the foreclosure of the federal tax liens and the judicial sale of the school and the surrounding property.

SO ORDERED.



U. S. D. J.

Dated: Brooklyn, New York
July 27, 1977

477a

ORDER OF NEAHER, J. DATED JULY 27, 1977 AMENDING
JUDGMENT ENTERED FEBRUARY 9, 1976 OR AMENDED ON
UNITED STATES DISTRICT COURT MAY 27, 1976 M'FILMED
EASTERN DISTRICT OF NEW YORK (Filed July 27, 1977)

----- -x
UNITED STATES OF AMERICA,

Plaintiff,

-against-

HELEN K. TASSOP, d/b/a ST.
ANDREW ACADEMY ON THE SOUND;
TASSOP REALTY, INC.; ASTORIA
FEDERAL SAVINGS AND LOAN ASSOCI-
ATION; ESTELLE LEIBOWITZ LUNGO,
Executrix of Estate of HOWARD
LEIBOWITZ,

Defendants.
----- -x

75 C 1481

ORDER
AMENDING JUDGMENT

FILED
U.S. DISTRICT COURT E.D.N.Y.
JUL 27 1977
TIME A.M.
P.M.

In accordance with the court's memorandum and order
dated July 27, 1977,

IT IS ORDERED that the judgment entered on February
9, 1976, as amended on May 27, 1976, be further amended to
read as follows:

"IT IS ORDERED AND ADJUDGED that the
plaintiff, the United States of America, re-
cover of the defendant, Helen K. Tassop, d/b/a
the St. Andrew Academy on the Sound, the sum
of \$263,992.37, with interest thereon as pro-
vided by law."

Edward R. Neaher

U. S. D. J.

Dated: Brooklyn, N.Y.
July 27, 1977

TRANSCRIPT OF HEARING BEFORE HON. EDWARD
R. NEAHER ON AUGUST 25, 1977

(Filed August 29, 1977) (pp. 478a-504a) U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

478a
FILED
IN CLERK'S OFFICE
★ AUG 29 1977 ★
TIME A.M.
P.M.

-----X
UNITED STATES OF AMERICA, :
Plaintiff, : 75-C-1481
-against- :
TASSOP, :
Defendant . :

-----X

United States Courthouse
Brooklyn, New York

August 25, 1977
12 Noon

B E F O R E :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcript from my
stenographic notes in this proceeding.

Ilene Ginsberg

Official Court Reporter
U. S. District Court

ILENE GINSBERG
ACTING OFFICIAL COURT REPORTER

1 Appearances:

479a

2

2
3 DAVID G. TRATER, ESQ.
4 United States Attorney
5 for the Eastern District of New York

6
7 BY: PROSPER PARKERTON, ESQ.
8 Assistant U.S. Attorney

9
10 MILLER, MONTGOMERY, SOGI, BRADY & TAFT, ESQS.
11 Attorneys for the Defendant
12 200 Park Avenue
13 New York, New York

14
15 BY: DAVID S. WARD, ESQ.,
16 Of Counsel

17
18 ALSO PRESENT:

19 ARTHUR J. TEICHBERG
20
21
22
23
24
25

1
2 THE COURT: Have you been provided with a
3 copy?

4 MR. PARKERTON: I got a copy a few moments
5 ago and I have read it.

6 THE COURT: Do you have a copy of the
7 Government's papers?

8 MR. WARD: Yes and I have had an opportunity
9 to read it.

10 THE COURT: Why have not these liens, which
11 the Government conceded to be invalid been vacated?

12 MR. PARKERTON: It's my understanding that
13 the concession that the liens were invalid was part
14 of the consent judgment entered February, 1976.
15 That is a consent judgment that the Defendant has
16 tried to open up.

17 There has now been a decision saying that it
18 is valid in determining the amount of it in an
19 amended judgment and I understand that the Defendant
20 is now seeking to appeal that which would be seeking
21 to still withdraw her consent from the judgment and
22 if her consent were to be withdrawn then the
23 Government's consent to the quid pro quo would be
24 withdrawn.

25 In other words, I think, certainly, they --

1
2 the liens would be withdrawn immediately upon a
3 stipulation not to appeal this matter. But if the
4 Defendant wishes to appeal it and wishes to withdraw
5 her consent from the judgment then I think it is only
6 fair that the Government be allowed to retain its
7 interest pending the final disposition of the matter.

8 THE COURT: Let me inquire of Mr. Ward then on
9 what basis would an appeal be taken from the judgment
10 as entered?

11 MR. WARD: Well your Honor, it very well may
12 be that we will attempt to set aside the consent
13 judgment --

14 THE COURT: But -- let me put it this way:
15 There's no question that your client signed a
16 consent judgment.

17 MR. WARD: No question that the Government
18 signed it.

19 THE COURT: And the Government signed it.
20 I agree with that.

21 There was -- and maybe there might still be --
22 I don't know -- some question about amount because
23 I wrote a decision in which I said why I arrived at
24 that amount which is more favorable than was
25 previously claimed by the Government but nevertheless

1
2 the judgment, modified as to amount -- I don't
3 understand the basis on which it would be set aside.
4 Is there some claim that --

5 MR. WARD: For one thing, the very non-
6 compliance by the Government.

7 THE COURT: Wait a minute now. Remember --

8 MR. WARD: I'm not suggesting we are going
9 to take that route, your Honor.

10 THE COURT: I can understand the Government
11 not vacating the liens pending the signing of the
12 consent judgment finally but now that it has been
13 signed finally -- the reason I asked Mr. Parkerton
14 the first question was I don't accept the
15 Government's position any longer that since the
16 liens were conceded to be invalid that they should
17 not be promptly vacated forthwith.

18 MR. WARD: I agree with you entirely and I
19 think the answer to the Government's position here
20 is that if this consent judgment were withdrawn on
21 mutual consent the confession of the Government that
22 those liens are invalid stands.

23 THE COURT: Well, I'm not so certain about that.

24 MR. PARKERTON: I don't understand that to be
25 the fact.

1
2
3 MR. WARD: It was a factual concession, your
4 Honor.

5 THE COURT: It was my understanding that it
6 was a concession made in order to bring about a
7 settlement of the matter by way of consent judgment.

8 It is possible that the Government could
9 well sustain its position but having conceded their
10 invalidity and having obtained a consent judgment,
11 I do agree that they should fulfill their part of
12 the bargain and vacate the liens.

13 Now, let's assume they do that. Where do we
14 go from there? What is the position?

15 MR. WARD: Your Honor, I was going to
16 suggest that if I might pre-empt you a little bit,
17 why we are here is because we believe we can
18 satisfy this judgment if we are given the time.
19 Now, when -- I'm a johnny-come-lately in this
20 proceeding -- when I became involved with it several
21 weeks ago and took an initial look at it I didn't
22 believe the Defendants could do that. But I now
23 believe they can. I cannot warrant they can but
24 I believe they can and I believe, under the
25 circumstances of this case, especially with the
conduct of the Government, they should be given

1
2 the opportunity. The Government is in a fully
3 secured position. They have a judgment lien. What
4 is the compromise here? The real estate isn't
5 loosing value. They won't lose interest --

6 THE COURT: I don't see how they would.

7 MR. WARD: That would be the worse possible.

8 MR. PARKERTON: It doesn't seem there's any
9 possibility of raising money to satisfy the judgment
10 or even compromising the judgment. What is sought,
11 it appears, is a compromised or deferred payment
12 agreement.

13 What is stated in the affidavit, specifically
14 by mr. Teichberg is, that they were seeking a sum
15 of money in the area of 150 thousand dollars and
16 that might be feasible if the lender would be
17 secured by a first mortgage and the liens of the
18 United States would be subordinated.

19 As we know, there are two mortgages on the
20 property; one in a fairly small amount --

21 THE COURT: Is there reliable information as
22 to the mortgage figures?

23 MR. WARD: I believe the figure on Astoria
24 is 12 thousand --

25 THE COURT: That's the first?

1
2 MR. WARD: Yes.

3 THE COURT: 12 thousand.

4 MR. WARD: The figure of the Longo estate or
5 Mr. Liebowitz, is in the amount of 50 thousand dollars
6 and there's a question as to the enforceability of
7 that amount.

8 MR. PARKERTON: As I understand it, the figure
9 is between 50 and 100 thousand.

10 In the absence of Mr. Liebowitz --

11 MR. WARD: Mr. Liebowitz is dead.

12 MR. PARKERTON: His representative --

13 MR. WARD: I would represent that it is no
14 more than 50 thousand. That is the face amount of
15 it.

16 THE COURT: You represent it would not be more
17 than 50. All right.

18 I am trying to check your belief that the
19 delay of enforcement could not possibly succeed --

20 MR. WARD: There's more to the question not in
21 our papers, your Honor.

22 There is a very real possibility of other
23 financing.

24 MR. PARKERTON: These are representations we
25 have heard throughout this litigation.

1
2 THE COURT: As I see it, the Government
3 has to be paid.

4 MR. WARD: I would accept that proposition,
5 I think, your Honor, to the extent there is liability.

6 THE COURT: It is two hundred sixty some odd
7 as I recall, plus interest, which may add a
8 substantial number to the two hundred sixty.

9 I don't know what is apt to be realized in
10 terms of tuition payments by students -- in other
11 words, what kind of income is anticipated if they
12 reopen the school as a school.

13 MR. WARD: The funds would not come from that
14 source. I will be a little more specific.

15 We have had -- the school has had parents
16 step forward since this advertising. Since they
17 learned of this proceeding, one way or the other,
18 they have stepped forward and they want to see the
19 school stay open and overtures of financial aid have
20 been made.

21 MR. PARKERTON: There's a very real problem
22 on delay of having the school occupied by the
23 students and then interrupting the school year at
24 some subsequent date.

25 THE COURT: I know that. Time is running out

1
2 and unfortunately it has always run out in favor of
3 Ms. Tassop and the school without anything productive
4 from the Government's standpoint.

5 Assuming that the Government vacates the liens
6 forthwith -- I don't know really whether those liens
7 are the block that would prevent a mortgage but
8 assuming they are --

9 MR. WARD: It isn't, your Honor, because they
10 have a judgment lien.

11 THE COURT: Who has?

12 MR. WARD: The Government --

13 THE COURT: I am not talking about their
14 vacating a judgment lien but the underlying invalid
15 liens.

16 MR. WARD: I am suggesting that it is six of
17 one, half dozen of another in terms of financing.

18 THE COURT: The Government couldn't be expected
19 --

20 MR. WARD: It's not being requested --

21 THE COURT: (Continuing) -- to vacate a judgment
22 --

23 MR. WARD: It's not being requested, your Honor.

24 THE COURT: I just wanted to make that clear.

25 What I do want to say is that I do believe

1
2 if these are real prospects that the period of time
3 I could allow for their consummation would have to
4 be extremely short.

5 I do not know the contemplated school opening
6 date which is -- what time does school normally
7 resume -- but I would say, if the parents are coming
8 forward it would have to be with the greatest speed
9 and not just all deliberate speed.

10 MR. PARKERTON: We are dealing with a short
11 amount of time and it is customary for schools to
12 open shortly after Labor Day.

13 THE COURT: I don't know what the opening
14 date would be, if it were to come to pass. What
15 time period are we talking about? There's no use
16 in having them come back to school only to be
17 thrown out.

18 MR. WARD: The 12th of September, your Honor
19 for the students.

20 MR. PARKERTON: Might I ask that --

21 THE COURT: I regret that this was not brought
22 forward sooner.

23 MR. WARD: The illegal activity of the
24 Government transpired --

25 MR. PARKERTON: I object to that characterization.

1
2 MR. WARD: You have your own direction here
3 not complied with, your Honor.

4 THE COURT: You say the liens stand in the
5 way and on the other hand you say they don't.

6 If the bulk of the financing is coming from
7 parents who want the school to stay open I don't
8 believe they are particularly concerned about liens.

9 As far as those mortgage liens are concerned,
10 I suppose some settlement has to be made with
11 respect to the holdings. Obviously, a bank won't
12 give up a mortgage lien unless it is paid off.
13 However, I cannot hold the Government at bay here
14 in the circumstances of this case.

15 I know you came into the case late and
16 probably your firm has but this has been a long
17 road and substantial sums of money are involved
18 which represent really, trust funds that -- collections
19 of withholding taxes that were dissipated. We are
20 not dealing with what someone may say was a different
21 kind of indebtedness.

22 The Government here is placed in the position
23 of virtually underwriting tax payments by people who
24 owe taxes but paid them to Ms. Tassop who was
25 supposed to take them as a trustee and remit them

1
2 to the Government and it's a substantial sum of
3 money.

4 I would be willing to give you a very brief
5 period of time --

6 MR. WARD: Your Honor, if I may, I believe
7 what we have precisely before us this morning are
8 two things --

9 THE COURT: Whether I sign the order to show
10 cause or sign the Government's order making it
11 a matter of contempt when people interfere with the
12 Government's attempt to take possession; the judgement
13 of foreclosure and so forth.

14 Now really, I have to say that I do not believe
15 this school should be permitted to reopen on the
16 basis that it's a viable operation unless it is in
17 fact so and the only way it can become in fact so
18 is to raise the money necessary to satisfy the
19 judgment and these other liens sixty two thousand --
20 if that be the case -- which I suppose means some
21 considerable doing but I feel it has to be done.
22 That was my purpose, very frankly, in coming to the
23 conclusion I did with respect to denying some of the
24 Government's liens. I felt the Government certainly
25 had a just claim for the amount I entered and probably

1
2 more but in the interest of really, putting this
3 right on the line and calling -- when they put it
4 that way -- Ms. Tassop's bluff -- I don't mean she
5 has been bluffing -- you know what I mean -- if
6 there's money around to take care of this indebtedness
7 then let it come forth.

8 I can sign the order to show cause but
9 honestly, I feel we are dealing with both the
10 substance and root of the problem in the case right
11 here and now.

12 MR. WARD: I don't disagree, your Honor.
13 The money is the problem.

14 THE COURT: Knowing your firm, you are a
15 responsible lawyer and I know you are not trying to
16 pull the wool over the Court's eyes even if you
17 could.

18 I am sufficiently familiar with this case to
19 know that the Government's rights as embodied in
20 the judgment have to be enforced but I am not
21 unmindful of the value of the school and what it
22 stands for and I would lean over backwards to help
23 this objective of Ms. Tassop's to be realized but
24 I cannot do so on the basis of what are empty --
25 turn out to be empty promises. There has to be more

1
2 money forthcoming in some fashion or form that will
3 take care of this obligation before that school
4 opens. Otherwise, I must let the Government go
5 forward.

6 MR. WARD: If you sign both orders to show
7 cause --

8 THE COURT: I can do that --

9 MR. WARD: One can be brought on by notice
10 of motion, of course.

11 THE COURT: I'll sign them both if that's what
12 you want. I'm simply suggesting --

13 MR. WARD: What I hear from your Honor is
14 if we come in here with a reasonable concrete
15 proposal --

16 THE COURT: I'm not going to decide for the
17 Government, you understand. I made it very clear,
18 I think, I believe the Government has to be protected,
19 not only the Government but actually the parents
20 and students because I cannot proceed on a false
21 promise basis here.

22 There is going to be no opening, no activation
23 of this school unless -- to use the vernacular --
24 the cash is on the barrelhead.

25 MR. WARD: May I have a moment, your Honor?

1
2 THE COURT: Surely.

3 (Pause.)

4 MR. WARD: Your Honor, I would propose this:
5 That the motions be made returnable on September 7
6 or September 8th. That's Tuesday --

7 THE COURT: September isn't possible because
8 of the United States Judicial Conference which I
9 must be present at on September 8th.

10 MR. WARD: The 6th is the Tuesday after
11 Labor Day. I have all kinds of trial calendars that
12 date.

13 MR. PARKERTON: September 2nd?

14 MR. WARD: No, you are talking about the
15 school not opening. The school will not be open at
16 that time and I take it that the Judge is in a
17 position to make a fairly prompt disposition of the
18 motion. We need that much time, your Honor. We have
19 got to have a stay of execution now.

20 MR. PARKERTON: Your Honor, on Tuesday I got a
21 call from a woman saying she saw an advertisement
22 in the newspaper that the school would be sold --

23 THE COURT: Yes --

24 MR. PARKERTON: (Continuing) -- I told her
25 what it said in the article was accurate; that I

1
2 understood it was in litigation and would be appealed;
3 that I could not advise her. She said she just paid
4 eighteen hundred dollars to St. Andrews. So at this
5 time, monies are coming in. They may well continue
6 to come in until such time as the marshals actually
7 take possession of the premises.

8 If the monies go the way the trust fund went
9 I suggest that the parents of the children would be
10 hard pressed to find a remedy in light of the
11 mortgages and judgments that the United States
12 already has.

13 I think the interest of the parents of the
14 children should be considered so there'll be too
15 much of a lag in the marshals taking over the
16 premises before the projected opening date of the
17 school.

18 MR. WARD: If you will indulge me again, your
19 Honor, if I may.

20 (Pause.)

21 MR. WARD: I am led to believe that meay not
22 be the entire story -- that those monies were paid
23 in May.

24 At any rate, I understand the point and I
25 don't necessarily agree it's well taken but I will

1
2 take steps to assure that payments that payments
3 received at this point are put into an escrow
4 account.

5 THE COURT: Well, that certainly should be
6 done with respect to all payments, I would think,
7 that have been made for tuition for this coming
8 school year because it was my understanding from
9 some of the prior discussions when Mr. Taft was
10 here that that would be done. A separate account
11 was going to be created so that that tuition money
12 wouldn't be expended. I think the parents could
13 be very critical, not only of Ms. Tassop but the
14 Government as well for not protecting their
15 interest in those monies.

16 It's a terrible thing if parents scrape
17 together substantial sums to get an education for
18 their children and then find them hopelessly tied
19 up in litigation or otherwise dissipated. I hope
20 you will impress upon your client the importance of
21 that.

22 I must say, I realize this is the time of
23 year when we have problems but --

24 MR. WARD: I have had one day's vacation
25 this summer, your Honor.

1
2 THE COURT: I have had one week so I am a little
3 better off than you are.

4 You say the 6th --

5 MR. WARD: If it is necessary for you --

6 THE COURT: I really would prefer that but let
7 me see -- the 6th --

8 MR. WAPD: They are trial calendars, actual
9 engagements.

10 THE COURT: Well, let's see what I have.

11 (Pause.)

12 THE COURT: I think it will be better to make
13 them returnable on the 6th to be on the safe side.
14 If there is some -- I think we had better leave it
15 at that. Leave it at the 6th. I think it would be
16 better if I did it at 4 o'clock in the afternoon.

17 MR. WARD: Fine with me, your Honor.

18 THE COURT: You have been served, I think, as
19 a practical matter.

20 MR. PARKERTON: Yes.

21 MR. WARD: We of course have been served.

22 MR. PARKERTON: Do you want the admissions on
23 the original?

24 MR. WARD: Oh, yes.

25 THE COURT: Those have been signed. This is an

1
2 extra copy.

3 So, we are on for 4 o'clock on the 6th.

4 I suggest you might want to have this proceeding
5 transcribed, Mr. Parkerton.

6 MR. PARKERTON: Yes.

7 THE COURT: Your man in Washington will
8 probably want to see what went on.

9 MR. PARKERTON: I suspect so.

10 One thing further, I'd like to ask if I may:
11 As you pointed out, if these funds deposited for
12 tuition would be dissipated, the Government would
13 be looked at in a very bad light.

14 In the interest of the parents of the students
15 I would ask that Ms. Tassop be ordered now, on the
16 record, to deposit any monies she receives for
17 tuition for the coming school year in an escrow
18 account.

19 THE COURT: I will make that direction on the
20 record.

21 MR. WARD: Ms. Tassop is indicating she
22 acknowledges the direction of the Court.

23 THE COURT: I will also make a direction on the
24 record, in case it was not made clear before that the
25 Government shall proceed forthwith to vacate the liens

1
2 conceded to be invalid with respect to this property.
3 They are tax liens as I understand it. We are not
4 talking about mortgage liens. There are tax liens.

5 MR. PARKERTON: Correct.

6 MR. WARD: And you will stop this advertising?

7 MR. PARKERTON: No. We are not going to stop
8 the advertising. That is what you have asked for
9 but by statute it must be advertised once a week
10 for four consecutive weeks. That means, if the
11 advertising is stopped, then it would take six
12 weeks --

13 THE COURT: I did not mean for the Government
14 to discontinue whatever had to be done. I was
15 directing my remarks to the marshals taking possession,
16 etc.

17 MR. WARD: This advertising is going to
18 defeat the purpose.

19 THE COURT: Well look here, it won't defeat
20 the purpose because -- let me put it this way -- if
21 people should continue to make contact as a result
22 of seeing the ad -- actually, it's somewhat
23 unusual for people to read ads of this kind because
24 they are pretty formal and usually stuck on the back
25 page of the newspaper -- I imagine a news article

1
2 must have developed.

3 MR. WARD: Here, we are not talking about
4 protection of the parents.

5 The determination as to whether or not the
6 school will open will be made before you -- made
7 before the opening.

8 Now, we are talking simply about additional
9 delay to the Government which really is of no
10 consequence to them.

11 THE COURT: Virtually, what you are getting
12 here is an additional delay until September 6th.

13 MR. WARD: Yes.

14 THE COURT: I want to make it clear that they
15 are enjoined of taking many steps and execution of
16 the judgment other than continuation of advertising --
17 what is it?

18 MR. PARKERTON: Of the notice of sale
19 pursuant to the judgment of foreclosure.

20 THE COURT: I don't believe that will really
21 harm you.

22 MR. WARD: Arthur Teichberg, a member of the
23 board would like to be heard.

24 THE COURT: Yes.

25 MR. TLICHBERG: I am helping Ms. Tassop to

1
2 obtain funds -- helping her --

3 THE COURT: I couldn't wish you more success.

4 I point out -- and I am sure you have been
5 an interested listner to what has gone on here -- that
6 the Court simply cannot extend indefinitely here,
7 without corcrete evidence that there is sufficient
8 funds coming forward to take care of the obligations
9 to the Government under this judgment.

10 MR. TEICHBERG: One of the problems we are
11 having is this: The parents whom we hope to get a
12 bond commitment from will find it very hard and they
13 are finding it very hard to advance monies if the
14 school is advertised as a foreclosure sale by the
15 Government.

16 We would like to stay the advertising --

17 THE COURT: Well, I say, I believe the
18 advertising is not going to be that detrimental
19 to your efforts. I think the Government has to be
20 allowed to complete that aspect of it because in
21 actuality I suppose -- I don't know -- I suppose
22 interested real estate people may observe these ads.
23 I guess it is their business to do it.

24 MR. TEICHBERG: It goes fur' r than that.

25 You see what happens is, one person might be

1 informed of the ad through somebody who is
2 knowledgeable on real estate. They thereupon come
3 in and ask the school to explain it and they spread
4 it around to the other parents.
5

6 THE COURT: Let's put it this way: I'm simply
7 saying that the Government may continue to insert
8 the ads. If inquiry is made your client or whoever
9 her spokesman would be, could correctly, accurately
10 state that the Court has signed an order which stays
11 matters until September 6th in an effort to see if
12 there can be some final solution. I see no harm in
13 assuring somebody to that extent as long as those
14 putting money for tuition have the assurance that
15 this money is going into a separate escrow account
16 and it will be available to make refunds in the
17 event the tragedy or disaster strikes.

18 MR. TRICHBURG: I would like to ask one more
19 question.

20 Did I hear your Honor mention that a
21 reasonable sum would be satisfactory? Suppose
22 Ms. Tassop can come up with one hundred fifty
23 thousand as against the two hundred thirty --

24 THE COURT: It's more than that.

25 MR. PARKERTON: Two hundred sixty-three.

1
2 MR. TILCHBERG: Well, as I say, suppose Ms.
3 Tassop can raise one hundred fifty thousand and then,
4 we would like to discuss with the Government a
5 pay-out proposal. Would that be sufficient?

6 THE COURT: That's a business matter I believe
7 for the Government to decide. I certainly cannot
8 compel the Government, having signed a judgment
9 that entitles them to collect two hundred sixty
10 three thousand and then go ahead and exercise such
11 rights under that judgment as foreclosure and sale
12 and so forth.

13 I would believe, from something Ms. Tassop
14 said in the past, that if the religious authorities
15 here are truly interested in the welfare of these
16 children attending this school that somehow they
17 might be brought into it to put up some money.
18 For instance, I know that in Hempstead -- and I'm
19 sure Ms. Tassop must know of it -- there's a very,
20 what I would call rich looking church on Cathedral
21 Avenue in Hempstead, patronized by very wealthy
22 parishoners and part of whatever the Greek Diocese
23 is. Sure, there must be money around and the people
24 could put up money -- is it St. Peter or St. Paul?

25 MS. TASSOP: It is St. Paul. It is a beautiful

1
2 went together.

3 THE COURT: Let me say that I think I am
4 solving your problem --

5 MS. TASSOP: I don't mean to interrupt --

6 THE COURT: (Continuing) to clear the liens
7 off --

8 MS. TASSOP: What happened to me last
9 Wednesday, a citizen of the United States -- they
10 came in, seized the property and the liens were
11 still there. I seem to be very thick on this. I
12 don't understand that.

13 THE COURT: Actually -- let me put it this
14 way. You may have been, shall we say, offended,
15 but you were not really damaged because if the
16 Government -- as it did under the judgment -- had
17 the right to seize the property pending the
18 foreclosure then really, the liens were an academic
19 matter. However, I now realize, in view of what
20 appears to be efforts being made to raise funds that
21 perhaps, it gives people some additional assurance
22 that the only thing that will be outstanding, aside
23 from the mortgages which have been described, is
24 the Government's judgment when in reality the
25 Government's judgment comes virtually first -- the

1 taxes. Therefore, it is the most important thing.

2
3 Now with respect to Astoria or the Longo
4 Estate, I don't know what the situation is but it's
5 the Government's obligation that must be taken of --

6 MS. TASSOP: It will be --

7 THE COURT: (Continuing) -- in a way
8 satisfactory to the Government. I am not speaking
9 for them. I am supposed to be in between, in the
10 middle, which I feel I am in this situation because
11 I sympathize with you and your desires and on the
12 other hand the Government has such clear legal
13 rights --

14 MS. TASSOP: I appreciate your interest.

15 MR. WARD: As to additional papers, would you
16 want them before --

17 THE COURT: Anything you want to submit, why
18 not say at least by oh, I think on that day is
19 sufficient.

20 MR. WARD: That's fine. Otherwise, we are
21 chopped back --

22 THE COURT: I don't see any need for
23 accelerating that.

24 * * * * *

I hereby certify that the foregoing is
a true and accurate transcript from my
stenographic notes in this proceeding.

25
Glenn Ginsberg

Official Court Reporter
U. S. District Court

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff,

- against -

HELEN K. TASSOP, et al.,
Defendants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 112 West 136th Street; New York, New York

That on the [REDACTED] 30th day of January 19 78 at 225 Cadman Plaza
Brooklyn, New York

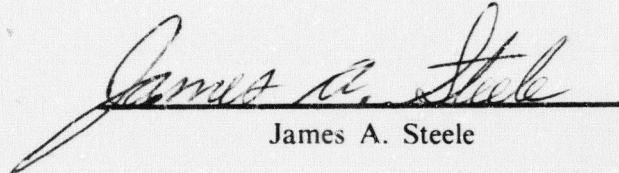
deponent served the annexed
Appendix [REDACTED]

upon

David Trager: U.S. Attorney Eastern Dist.

the [REDACTED] in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the [REDACTED] herein,

Sworn to before me, this 30th
day of January, 19 78


James A. Steele


ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979